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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. ~~352~~ 109.

EDWIN A. McINTIRE AND MARTHA McINTIRE,
APPELLANTS,

vs.

MARY C. PRYOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 8, 1897.

(16,586.)

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(16,586.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 373.

EDWIN A. McINTIRE AND MARTHA McINTIRE,
APPELLANTS,

vs.

MARY C. PRYOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE. } No. 465.

a Supreme Court of the District of Columbia.

MARY C. PRYOR, Complainant,
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE, Defendants. } No. 12761. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed October 21, 1890.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE, and HARTWELL JENISON. } In Equity. No. 12761, Doc. 31.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant states as follows:

1. She is a resident of the District of Columbia.

2. The defendants are residents of the District of Columbia.

3. The defendant E. A. McIntire is sued as trustee and also in his own right. The defendant Martha McIntire is sued in her own right, and the defendant Hartwell Jenison is sued in his own right as holder of the note hereinafter described.

4. That on the 2nd day of May, 1880, the complainant, being seized in her own right as her separate estate of part of lots 21 and 22, in square 569, of the District of Columbia, beginning for the same on F street nineteen (19) feet from the northeast corner of lot twenty (20), thence east with F street twenty-six (26) feet, thence south

one hundred (100) feet to a twenty-foot alley, thence west twenty-six (26) feet, and thence north one hundred feet to the beginning, executed to the defendant E. A. McIntire a deed of trust upon said property to secure the payment of $450.00 to one Hartwell Jenison, the said indebtedness being represented by the joint and several promissory note of the complainant and her husband, Thomas Pryor, now deceased. The said deed of trust is recorded in Liber 941, folio 449, and leave is prayed to read the same on the hearing of this cause as often as occasion may require.

2 5. That during the latter part of the month of May, 1881, the said note being overdue and unpaid, the said defendant, E. A. McIntire, represented to the complainant and her husband, both of them being unlettered colored persons and ignorant of business and legal methods, that he was compelled to sell the said described property under the deed of trust hereinbefore mentioned; that it was not his intention, however, to disturb the complainants in their ownership thereof; that the said sale would be a mere matter of form, and suggested to complainant's husband that he should buy in the property at the sale, and time would be allowed him to pay said indebtedness.

6. That accordingly on or about the 17 day of June, 1881, the said sale took place, having been first advertised in the Daily Critic, an evening newspaper published in the city of Washington, which advertisement is in words and figures as follows:

"Sale of a Desirable Lot on F Street N. W."

"By virtue of a deed of trust dated May 2nd, A. D. 1880, and recorded in Liber 941, folio 449, &c., of the land records of the District of Columbia, and at the request of the party secured thereby, I will sell at public auction, in front of the premises, on Friday, the 10th day of June, A. D. 1881, at 5 o'clock p. m., all that piece of ground known as lots numbered 21 & 22, in square numbered 569, in Washington, D. C., beginning for the same at a point on F street north, distant 19 feet from northeast corner of lot 20, in said square, thence running east on the line of F street 26 feet, thence south one hundred feet to a twenty-foot alley, thence west along the line of said alley 26 feet, thence north 100 feet to the place of beginning, together with the improvements thereon. Terms: One-third cash and the balance in one and two years at 6 per cent. A deposit of $100 will be required at the time of sale, conveyancing at purchaser's cost, and terms to be complied with in seven days, else the property to be resold at risk and cost of defaulting purchaser."

EDWIN A. McINTIRE, *Trustee.*

Ma. 28, 31, J'e 2, 4, 6, 9.

J. T. COLDWELL, *Auctioneer.*

"The above sale is postponed on account of the weather until Friday, June 17th, 1881, same hour and place."

EDWIN A. McINTIRE, *Trustee.*

J'e 11, 13, 15, 17.

3 7. That at said sale complainant's husband became the purchaser thereof for the sum of $700.00; that after said sale the said E. A. McIntire did not disturb for some time your complainant and her husband in their possession of said property, but represented to them that they might pay him rent for the property and he would apply the rent upon the amount of the indebtedness due, and when the same was paid would convey the said property to complainant; whereupon complainant and her husband for some time afterwards, to wit, until on or about the 24 day of September, 1884, paid the said McIntire the sum of six dollars per month ostensibly as rent, but with the understanding, however, that said sum would be applied to the liquidation of the said note, and when the same was paid the said property would be reconveyed to complainant.

8. That complainant has only recently discovered that the sale of said property, pretended to have been made by the said McIntire as trustee under the said deed of trust, was made without the knowledge, authority, or direction of the holder of the note secured by the said trust, but that the said E. A. McIntire fraudulently caused said sale to be made in pursuance of a scheme of his own to obtain the said property for himself; that a few days after said sale was made the said E. A. McIntire executed a pretended deed of the said property to the said Hartwell Jenison, to wit, on the 28th day of June, 1881, the said deed being recorded in Liber 1003, folio 187, of the land records of the District of Columbia, and leave is prayed to read the same upon the hearing of this cause as often as occasion may require.

9. That the said deed to the said Jenison was made with-
4 out said Jenison's knowledge, authority, or consent, and, having so executed it, said McIntire, secretly and unknown to said Jenison, kept the same in his (said McIntire's) possession for a period of nearly ten months, to wit, until the 21 day of April, 1882, when he (said McIntire) recorded the same as above stated, having previously procured, on the 19th day of April, 1882, the said Jenison to sign a deed purporting to be a conveyance by the said Jenison to one Emma Taylor of the said property. Complainant is informed by said Jenison and believes that at the time of the execution of the said deed to Emma Taylor the said Jenison merely executed the same in compliance with the request of said E. A. McIntire, not knowing its true significance or inquiring its meaning, having at that time full confidence in said McIntire and relying upon his representations that the property was heavily encumbered with back taxes and special assessments, and that to secure anything of the indebtedness it was necessary to find a purchaser for the property, and that he (McIntire) had found such a purchaser, and, so believing, said Jenison, as he informs complainant, executed said deed at the request of said McIntire under the belief that as payee of the note secured come sort of deed from him to the purchaser was necessary; that complainant is also informed by said Jenison that he did not at that time know that the property had

been sold under the deed of trust, or that it had *it had* been conveyed to him, or that the title stood in his name, and only quite recently discovered the facts, and that the said Jenison received no consideration whatever for making the said deed, and never knew or saw the said Emma Taylor, the alleged grantee therein, and has never received from said McIntire any payments on account of said note, except the sum of $100, paid nearly six years afterwards, which amount the said McIntire
5 pretended was all that was left of the proceeds of sale after the payment of taxes, with interest and cost; that your complainant is informed and believes and so avers that said Emma Taylor is a fictitious person and is really Emma Taylor McIntire, the sister of the said E. A. McIntire, and that the said deed made by said E. A. McIntire to Jenison and the said deed fraudulently procured by him from the said Jenison to Taylor were only a part of the said McIntire's scheme to defraud complainant of her property and to obtain the same for himself.

10. That on the 21st day of April, 1882, the said trustee, McIntire, placed upon record the said deed from Jenison to Emma Taylor, in Liber 1003, folio 188, and on the same day placed upon record the deed theretofore executed by him (McIntire) to Jenison on the 28 day of June, 1881, which, as heretofore stated, had been secretly kept by said McIntire until said recordation.

11. That thereafter, on the 31 day of May, 1884, the said McIntire executed or caused to be executed a deed in the name of the aforesaid fictitious person, Emma Taylor, to his sister, Martha McIntire, which said deed is recorded in Liber 1210, folio 182, of the land records of the District of Columbia, and leave is prayed to refer to and read the same on the hearing of this cause as often as occasion may require. The said fictitious conveyance to Martha McIntire was made for the alleged consideration of $2,500, but complainant is informed and believes that the said defendant, Martha McIntire, paid no consideration for said real estate, and that the said conveyance was made to her in pursuance of the fraudulent design of the said trustee, McIntire, to cover up the fraud by him perpetrated on complainant and with the view that the benefits of the said property should inure to him as the real though
6 not apparent owner of said property, and complainant says that, whether the said Martha paid any consideration or not for the said property, she had notice, actual or constructive, of the said fraudulent acts of the said trustee, McIntire, and she cannot in equity hold the said property against your complainant.

12. That on the 22 day of September, 1887, the said E. A. McIntire, by false and fraudulent representations to said Jenison, as complainant is informed and believes, induced the said Jenison to execute to the aforesaid Emma Taylor a deed of quitclaim of said described property, in which deed the said Jenison also quitclaims for drawbacks or rebate on account of claims for special taxes on said property. The said deed is recorded in Liber 1287, folio 9, of said land records, and leave is prayed to refer to and read the same on the hearing of this cause as often as occasion may require.

The consideration of one hundred dollars mentioned in said deed is false; no consideration whatever, as complainant is informed and believes, was paid for the execution thereof.

Complainant is informed and believes that the said McIntire, during all the period since said sale, has appropriated to himself the rents and profits of the said property under the pretense to your complainant that it had been purchased subsequent to said pretended foreclosure sale by some party or parties whose name was never disclosed to complainant. Wherefore complainant says that the said sales having been made without authority and in pursuance of a fraudulent scheme on the part of said E. A. McIntire to obtain said property for himself, the same are wholly void and should be so declared by a court of equity. Your complainant therefore prays:

7 *Prayers.*

1. That the said defendants, Edwin A. McIntire, Martha McIntire, and Hartwell Jenison, be required to appear and answer the exigency of this bill, and particularly that the said Martha McIntire answer the following interrogatories:

1. Who is the Emma Taylor named in the deed from her to you, dated the 19 day of April, 1882, and mentioned in the bill?

2. Did you ever see said Emma Taylor, and what consideration, if any, did you pay her for executing said deed? Complainant hereby expressly waives the oath of the said McIntires to their respective answers to the foregoing bill and interrogatories.

2. That the said Martha McIntire, by her agents and attorneys, be enjoined during the pendency of this suit from conveying or in anywise encumbering the said property.

3. That the said pretended foreclosure sale and the deed of said trustee, McIntire, to the said Hartwell Jenison and by said Jenison to the said Emma Taylor and by her to the said Martha McIntire be declared null and void.

4. That an account be taken of what is due by complainant upon said note of $450.00, dated the 20 day of May, A. D. 1880, and secured by the deed of trust of that date, and that upon payment by complainant of the amount so found to be due upon said note to the lawful holder thereof, which complainant herewith tenders herself ready to do, the said trust be declared by decree of this court released and satisfied and complainant seized of her former estate in the property.

5. That said trustee, McIntire, and said Martha McIntire be required to account to complainant for all moneys, rents, issues,
8–12 and profits received by them or either of them from or on account of said real estate since the said pretended foreclosure sale.

6. That for the purpose of taking said account a reference may be had to the auditor.

7. That complainant may have such further and other relief as the nature of the case may require.

8. To which end complainants pray for process against the said defendants.

MARY C. PRYOR.

The defendants to this bill of complaint are Edwin A. McIntire, Martha McIntire, and Hartwell Jenison.

I do solemnly swear that I have heard read the foregoing bill of complaint by me signed; that I know the contents thereof, and that the facts therein stated of my personal knowledge are true and those stated upon information and belief I believe to be true.

MARY C. PRYOR.

FRANKLIN H. MACKEY,
WM. W. BOARMAN,
Sol's for Complainant.

Subscribed and sworn to before me this 20th of October, 1890.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Cl'k.*

* * * * * * *

13 *Bill as Amended.*

Filed November 28, 1890.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR *vs.* EDWIN A. MCINTIRE, MARTHA MCINTIRE, and HARTWELL JENISON.	In Equity. No. 12761, Docket 31.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant states as follows:

1. She is a resident of the District of Columbia.

2. The defendants are residents of the District of Columbia.

3. The defendant E. A. McIntire is sued as trustee and also in his own right. The defendant Martha McIntire is sued in her own right, and the defendant Hartwell Jenison is sued in his own right as holder of the note hereinafter described.

4. That on the 2nd day of May, 1880, the complainant, being seized in her own right as her separate estate of part of lots 21 and 22, in square 569, of the District of Columbia, beginning for the same on F street 19 feet from the northeast corner of lot 20, thence east with F street 26 feet; thence south 100 feet to a 20-foot alley; thence west 26 feet, and thence north 100 feet to the beginning, executed to the defendant E. A. McIntire a deed of trust upon said property to secure the payment of $450 to one Hartwell Jenison, the said indebtedness being represented by the joint and several promissory note of the complainant and her husband, Thomas

Pryor, now deceased. The said deed of trust is recorded in Liber 941, folio 449, and leave is prayed to read the same on the hearing of this cause as often as occasion may require.

14 5. That during the latter part of the month of May, 1881, the said note being overdue and unpaid, the said defendant, E. A. McIntire, represented to the complainant and her husband, both of them being unlettered colored persons and ignorant of business and legal methods, that he was compelled to sell the said described property under the deed of trust hereinbefore mentioned; that it was not his intention, however, to disturb complainant in her ownership thereof; that the said sale would be a mere matter of form, and suggested to complainant's husband that he should buy the property at the sale, and time would be allowed him to pay said indebtedness.

6. That accordingly, on or about the 17th day of June, 1881, the said sale took place, having been first advertised in the Daily Critic, an evening newspaper published in the city of Washington, which advertisement is in words and figures as follows:

"*Sale of a Desirable Lot on F St.*"

"By virtue of a deed of trust dated May 2, A. D. 1880, and recorded in Liber 941, folio 449, &c., of the land records of the District of Columbia, and at the request of the party secured thereby, I will sell at public auction, in front of the premises, on Friday, the 10th day of June, A. D. 1881, at 5 o'clock p. m., all that piece of ground known as lots 21 and 22, in square numbered 569, in Washington, D. C., beginning for the same at a point on F street north, distant 19 feet from the northeast corner of lot 20, in said square; thence running east on the line of F St. 26 feet; thence south 100 feet to a 20-foot alley; thence west along the line of said alley 26 feet; thence north 100 feet to the place of beginning, together with

15 the improvements thereon. Terms: One-third cash, and the balance in one and two years at 6 %. A deposit of $100 will be required at the time of the sale, conveyancing at purchaser's cost, and terms to be complied with in seven days; else the property to be resold at risk and cost of defaulting purchaser."

EDWIN A. McINTIRE, *Trustee.*

Ma. 28, 31, J'e 2, 4, 6, 9.

J. T. COLDWELL, *Auctioneer.*

"The above sale is postponed on account of the weather until Friday, June 17, 1881, same hour and place.

EDWIN A. McINTIRE, *Trustee.*"

J'e 11, 13, 15, 17.

7. That at said sale complainant's husband, as complainant and her said husband supposed, became the purchaser thereof for the sum of $700; that after said sale the said E. A. McIntire did not disturb for some time your complainant and her husband in their possession of said property, but represented to them that they might

pay him rent for the property and he would apply the rent upon the amount of the indebtedness due, and when the same was paid would convey the said property to complainant; whereupon complainant and her husband for some time afterwards, to wit, until on or about the 24th day of September, 1884, paid the said McIntire the sum of $6 per month ostensibly as rent, but with the understanding, however, that said sum would be applied to the liquidation of said note, and when the same was paid the said property would be reconveyed to complainant.

8. That complainant has only recently discovered that the said sale was made by the said trustee, McIntire, really in his own
16 interest and with the intent to obtain for himself, by fraudulent misrepresentations to complainant, her late husband, and the said Jenison, the title to the said property; that, in pursuance of said fraudulent design, the said McIntire, on the day after said sale, to wit, on the 28th day of June, 1881, executed, as trustee, a deed of said real estate to said Jenison for a pretended consideration of $806, but kept the same from record, unknown to the said Jenison, for a period of nearly ten months, to wit, until the 21st day of April, 1882, when he recorded the same in Liber 1003, folio 187, of the land records of the District of Columbia.

9. That on or about the day after executing said deed to said Jenison the said McIntire pretended to said Jenison that, in order to pay the taxes in arrear and expenses of sale, the sum of $425 would be required, and accordingly procured the authority of said Jenison to borrow the same upon his, Jenison's, promissory note, secured by deed of trust upon said property; that thereupon, at said McIntire's instance, the said Jenison executed his promissory note for $425, payable in one year, to one Emma Taylor, and joined with his wife in securing the same by deed of trust to said McIntire upon said property. The said deed of trust is dated the 29th day of June, 1881, and recorded July 11, 1881, in Liber 971, folio 494, of said land records; that thereafter—that is to say, on or about the 19th day of April, 1882—the said McIntire, pretending to said Jenison that a purchaser for said property for more than the incumbrance upon it to said Emma Taylor could not be found, induced the said Jenison to execute a deed in fee of said property to said Emma Taylor for the amount of the encumbrance thereon, to wit, $425.

The said deed was accordingly executed by Jenison and
17 wife, dated the 19th of April, 1882, and recorded on the 31st of said month in Liber 1003, folio 188, of said land records. About six years afterwards the said McIntire induced said Jenison, by representing that the same was necessary, to execute a deed of quitclaim to said Emma Taylor of said property, dated September 27th, 1887, and recorded in Liber 1287, folio 9, of said land records. That the only purport of said quitclaim was to pass to said Taylor the right to any drawbacks upon special taxes theretofore assessed upon said property. But complainant is informed by said Jenison, and she believes the same to be true and therefore avers, that the true purport of said deed was not explained to said Jenison and

that he signed the same only because it was asked of him by said McIntire.

10. Your complainant is informed and believes that said Emma Taylor was and is an altogether fictitious person, created by said McIntire for the purpose of carrying out his fraudulent scheme of gaining possession of said property for himself; that the $425 note and the deed of trust to secure the same were all fictions, manufactured by said McIntire to the same end; that the money used by said McIntire to pay said taxes and expenses was much less than $425 and was paid out of his own funds; that the deed in fee of said property to Emma Taylor was but a cloak to cover up the fraud of said McIntire in obtaining complainant's property, and the said quitclaim was for the same purpose; and complainant is advised by counsel and so avers that, the said Emma Taylor being a fictitious person, the deeds executed to and in her name were void, and that no title passed thereby. All of the foregoing facts have only been discovered by complainant within the past few months, and com-
18 plainant is informed by said Jenison, and she believes the same to be true and therefore avers, that all of said deeds were executed by said Jenison in ignorance of the fraud being perpetrated and the purpose and intent thereof; that he had no knowledge or belief that said Emma Taylor was a fictitious person; that he never saw or had any correspondence with the payee of the note or the grantee of the deeds, but relied wholly upon the statements and representations made to him by said McIntire; that he was not present at the trustee's sale of said property, but left the matter entirely in said McIntire's hands, and that the sum of one hundred dollars is all that he ever received from said McIntire on account of said property.

11. That thereafter, on the 31st day of May, 1884, the said McIntire executed or caused to be executed a deed in the name of the aforesaid fictitious person, Emma Taylor, to his sister, Martha McIntire, which said deed is recorded in Liber 1210, folio 182, of the land records of the District of Columbia, and leave is prayed to refer to and read the same on the hearing of this cause as often as occasion may require. The said fictitious conveyance to Martha McIntire was made for the alleged consideration of $2,500; but complainant is informed and believes that the said defendant, Martha McIntire, paid no consideration for said real estate, and that the said conveyance was made to her in pursuance of the fraudulent design of the said trustee, McIntire, to further cover up the fraud by him perpetrated on complainant and with the view that the benefits of the said property should inure to him as the real, though not apparent, owner of said property; and complainant says that, whether the said
19 Martha paid any consideration or not for the said property, she had notice, actual or constructive, of the said fraudulent acts of the trustee McIntire, and she cannot in equity hold the said property against your complainant.

12. Complainant is informed and believes that the said McIntire, during all the period since said sale, has appropriated to himself the rents and profits of the said property, under the pretence to your

complainant that it had been purchased subsequent to said pretended foreclosure sale by some party of parties whose name was never disclosed to complainant. Wherefore complainant says that the said sale having been made in pursuance of a fraudulent scheme on the part of said E. A. McIntire to obtain said property for himself, the same are wholly void and should be so declared by a court of equity. Your complainant therefore prays:

Prayers.

1. That the said defendants, Edwin A. McIntire, Martha McIntire, and Hartwell Jenison, be required to appear and answer the exigency of this bill, and particularly that the said Martha McIntire answer the following interrogatories:

1. Who is the Emma Taylor named in the deed from her to you, dated the 19th day of April, 1882, and mentioned in the bill?

2. Did you ever see said Emma Taylor, and what consideration, if any, did you pay her for executing said deed?

Complainant hereby expressly waives the oath of the said McIntires to their respective answers to the foregoing bill and interrogatories.

2. That the said Martha McIntire, her agents or attorneys, be enjoined during the pendency of this suit from conveying or in anywise encumbering the said property.

20 & 21 3. That the said pretended foreclosure sale and the deed of said trustee, McIntire, to the said Hartwell Jenison and by said Jenison to the said Emma Taylor and by her to the said Martha McIntire be declared null and void.

4. That an account be taken of what is due by complainant upon said note of $450, dated the 20th day of May, A. D. 1880, and secured by the deed of trust of that date, and that upon payment by complainant of the amount so found to be due upon said note to the lawful holder thereof, which complainant herewith tenders herself ready to do, the said trust be declared by decree of this court released and satisfied and complainant seized of her former estate in the property.

5. That said trustee, McIntire, and said Martha McIntire be required to account to complainant for all moneys, rents, issues, and profits received by them or either of them from or on account of said real estate since the said pretended foreclosure sale.

6. That for the purpose of taking said account a reference may be had to the auditor.

7. That complainant may have such further relief as the nature of the case may require.

8. To which end complainant prays for process against the said defendants.

MARY C. PRYOR.

The defendants to this bill of complaint are Edwin A. McIntire, Martha McIntire, and Hartwell Jenison.

* * * * * * *

22 *Answer of Def't Jenison.*

Filed December 1, 1890.

* * * * * * *

The separate answer of Hartwell Jenison to the amended bill of complaint of the above-named complainant.

1, 2, 3, 4. The defendant admits the allegations of the 1st, 2nd, 3rd, and 4th paragraphs of the bill.

5. He has no knowledge whatever of the allegations of the 5th paragraph of the bill, and leaves the complainant to make such proof thereof as she may be advised.

6. He believes that the advertisement referred to in the 6th paragraph was inserted in the Daily "Critic," as alleged.

7 & 8. He was not, however, present at the sale of said property and does not know what occurred at said sale or what previous arrangements or agreements had been made between the said E. A. McIntire and complainant and her late husband. Defendant believes that he did direct a sale of said property by said trustee, McIntire. His belief of such fact, however, is based upon his having seen a written request signed by him directing said McIntire to make said sale, which written request has been recently shown him by said McIntire. Beyond that complainant has no recollection of having directed a sale of the premises. He admits that a deed was executed to him by said McIntire of said property, and he admits, upon information and belief, that the same was kept from record, without his knowledge, until the 21st day of April, 1882, as
23 stated in the 8th paragraph of the bill.

9. He admits that about the time of the execution of said deed the defendant McIntire stated to him that the taxes in arrear and expenses of sale would require about the sum of $425, and that at the instance of said McIntire he executed a promissory note for $425, payable in one year to one Emma Taylor, and joined with his wife in securing the same by deed of trust to said McIntire upon said property. He admits that on or about the 19th of April, 1882, he executed a deed in fee of said property to said Emma Taylor for the amount of the encumbrances thereon, to wit, $425, and that such deed was executed to said Emma Taylor because of statements made to him by said McIntire to the effect that no better price could be obtained for the property. He admits executing the deed of quitclaim referred to in said 9th paragraph, but does not recollect the purpose for which it was given further than that it was stated to be to perfect the deed already given. If it was given for any other purpose such purpose was not explained to him by said McIntire, and complainant signed it only because it was presented to him for signature, and because of the fact that he thought said McIntire was acting in this defendant's best interests, and because he had at that time unlimited confidence in him.

10. He does not know whether the said Emma Taylor is a ficti-

tious person or not. He never saw her or had any correspondence whatever with her, but supposed at the time of executing the said deeds that she was a person in existence, but the supposition was based entirely upon his confidence in said McIntire, and in
24 the belief that he would not impose upon this defendant or require him to execute a deed to a fictitious person. This defendant states in this connection that if any fraud has been perpetrated in the sale of said property or in the execution of any of the deeds it was done wholly without this defendant's knowledge. He admits that all that he has received of said McIntire on account of the sale of said property is the sum of one hundred dollars, as stated in said paragraph 9.

11. He has no knowledge in regard to the allegations of the 11th paragraph of the bill.

12. Answering the 12th paragraph, he has no knowledge as to whether or not the said McIntire has appropriated to himself the rents and profits of the said property during the period intervening from the sale until the execution of the deed by this defendant to Emma Taylor some ten months later, or whether he has continued to receive the rents and profits subsequent to that time. He is informed and believes, however, that the rents to which this defendant was entitled were collected by said McIntire during the period intervening between the sale and the executing by him of the said deed to said Emma Taylor; but he says that said McIntire has not accounted to him for the same.

13. Further answering, this defendant says that in the entire transaction with the complainant and in the execution of the deeds mentioned in the bill he acted in entire good faith and without the knowledge or notice of any fraud, imposition, or misrepresentation being practiced by the said McIntire. Complainant offers no objection to the vacation of the deed by said McIntire to him or of the other deeds mentioned in the bill. He has no desire to take
25 any advantage whatsoever of the complainant and is perfectly willing to have the said sale vacated and his trust reinstated upon the property, with leave to the complainant to pay whatever may be found due of the indebtedness secured by said deed of trust.

And, having fully answered, this defendant prays to be hence dismissed with his reasonable costs.

HARTWELL JENISON.

* * * * * * *

Subscribed & sworn to before me this 29th day of November, A. D. 1890.

RUTLEDGE WILLSON,
Notary Public.

26 *Answer of Def'ts McIntire.*

Filed December 2, 1890.

* * * * * * *

Joint answer of defendants Edwin A. and Martha McIntire in the above-entitled cause.

1. We have no knowledge of the present residence of the complainant.

2. We admit the residence of the defendants to be as alleged.

3. We admit the statements made in the 3d paragraph of the bill.

4. We admit the facts stated in the 4-h paragraph, except that the trust was made by the complainant and her husband. The husband managed the entire business.

5. We deny the facts stated in the 5-h paragraph, except that in the latter part of the month of May, 1881, the note was overdue and unpaid and that the husband of the complainant was notified of an intended sale unless the note was paid.

We deny that the complainant and her husband were ignorant as represented. The husband was at one time engaged as a teacher; both of them could read and write. The husband carried on the coal and wood business on his own account on the lot in question for many years, and we are informed and believe that both complainant and her husband were better informed than most of their race. We deny that there was any agreement not to disturb the complainant in her ownership as alleged. As a matter of fact the complainant and her husband had parted with the ownership by a deed in fee to defendant Martha McIntire on May 3d, 1881, as hereinafter recited.

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6. We admit that the property was advertised in the Evening Critic substantially as recited, except that the advertisement (a copy of which is with the trustee's papers) read "part of lots numbered 21 & 22," and not "lots numbered 21 & 22," as alleged.

7. We deny that complainant's husband became the purchaser at the sale. We deny that the complainant ever paid any rent or any money, or that we or either of us ever had any correspondence or conversation with the complainant on the subject then or at any other time, or that either of us ever spoke any matter of business with her in connection with this property.

The complainant's husband had frequently spoken to defendant E. A. McIntire about some domestic trouble he had had either with his wife or her relatives or with all of them, and he asked said defendant not to state to them or any of them any matter of business in which the said husband was interested, and said defendant never did.

Defendant E. A. McIntire denies that he represented to complainant and to her husband or to either of them that they might pay rent and that the rent would be applied to the indebtedness or to the liquidation of the note. There was never any understanding

about a reconveyance to the complainant. On the contrary, when the note was overdue and unpaid, to wit, on or about the 2d day of May, 1881, the husband of the complainant advised defendant E. A. McIntire that he (Thomas Pryor) and his wife could never pay the note, but that they would like to deed their equity in the property to some one who would relieve him of this matter and allow him to remain on the lot for awhile longer to carry on his
28 coal and wood business. Accordingly, on the 3d day of May, 1881, the complainant, Mary C. Pryor, and her husband joined in a deed in fee of said property to the defendant Martha McIntire, which deed is written on the usual printed form, signed in the presence of two witnesses, and duly acknowledged before a justice of the peace. Said deed recites that it was given subject to the deed of trust of May 2, 1880.

On the day following the day of the execution and delivery of said deed, to wit, on the 4 day of May, 1881, the said Thomas Pryor (husband of the complainant) entered into a written agreement to rent the said lot described in said agreement as "premises situate No. 108 F street N. W. (being wood and coal yard, with sheds, fences, &c., on part of lots 21 and 22, in square 569), in the city of Washington, D. C." Said agreement is in the usual printed form, signed by said Thomas Pryor in the presence of two witnesses.

Subsequently the said defendant, Martha McIntire, caused an examination to be made as to arrearages of taxes on said lot and was so much surprised to learn that there was a very large sum due for taxes instead of the small amount represented by complainant's husband as in arrears that she thought it best to allow the property to be sold under the deed of trust as hereinafter recited.

The husband of the complainant was well known to defendant E. A. McIntire for a number of years. The complainant was only known to him by sight, and he never had any business transactions with her except to get her to do some work for his family. Instead of having any idea of injuring the complainant or her husband, he aided them in many ways.

Sympathysing with said Thomas Pryor, the husband of
29 the complainant, who was troubled with family matters and unfortunate in business, and in endeavoring to aid him in his vocation, he, the said defendant, E. A. McIntire, purchased for said Thomas Pryor several cords of wood and afterwards gave him orders on Samuel Emery, a wholesale coal dealer in this city, for a supply of coal that he might continue as a wood and coal dealer on said lot, but continued misfortune, domestic troubles, sickness, and bad management prevented the said husband of the complainant from reimbursing said defendant the amount of said advances, and, being also unable to pay rent, he voluntarily vacated the lot.

8, 9, 10, 11. We deny the allegations in the 8th, 9th, 10th, and 11th paragraphs of the bill. The sale of the lot was made upon the written authority of the defendant Jenison, the holder of the note. Said authority is duly endorsed on the deed of trust signed by the holder of the note and bears date May 25, 1881, and it is now, with

a copy of the advertisement, &c., in the possession of E. A. McIntire as trustee.

The day prior to the date upon which the property was advertised to be sold the defendant Jenison advised the trustee that he (Jenison) could not be present at the sale, and sent him (the trustee) the following memorandum in writing:

JUNE 9, 18-1.

"E. A. McIntire, trustee:

You are hereby authorized to bid for me at the sale to be held of Mr. Pryor's property, F street near 1st, tomorrow (or whenever it may take place), an amount sufficient to cover loan, taxes, and expenses.

H. JENISON."

The property was offered at public sale and "struck off" to defendant Jenison for $806. A deed was made to him June 28, 1881, but as he declined to advance any money to pay for the advertising, auctioneer's fee, special taxes, &c. (which really amounted to more than the difference between the amount of his note and the said consideration of $806), defendant E. A. McIntire negotiated for him a loan of $425, and a deed of trust in regular form, bearing date the 29 of June, 1881, was executed and delivered by said Jenison and his wife, and said trust was duly recorded on the 11th of July, 1881.

At the instance of the defendant Jenison the defendant E. A. McIntire, as a real-estate broker, endeavored to find a purchaser at private sale for the lot, and for nearly a year had it advertised and placarded.

On the 13th of April, 1882, defendant Jenison wrote to defendant E. A. McIntire as follows:

TREASURY DEPARTMENT,
REGISTER'S OFFICE, *April* 13, 1882.

E. A. McIntire.

D'R SIR: I take it for granted that you have not effected any trade or exchange for my lot and presume there is not much prospect of making a sale before maturity of the trust deed. I do not think there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on, besides I am not in a situation to carry it. I shall doubtless have to submit to a sacrifice, &c., &c.

Truly yours, H. JENISON.

On the 19 of April, 1882, the said Jenison, declining to pay the note or the interest and fearing to risk a sale lest the property would not sell for sufficient to pay the incumbrance and he would be held for the deficit, decided it was best for him to convey his equity in the property to the payee of his note secured by said trust of June 29, 1881, in consideration of the surrender and cancellation of said note, and about a month thereafter said payee conveyed to the defendant Martha McIntire, who had previously (as above re-

cited) received a deed in fee of the same property from the complainant and the husband of the complainant.

We deny that defendant Jenison executed any deed merely
31 in compliance with the request of defendant E. A. McIntire, "not knowing its true significance or inquiring its meaning," as alleged in the 9th paragraph. We deny that any deed was made by defendant E. A. McIntire to defendant Jenison without said Jenison's knowledge, authority, or consent.

Some time after the above-recited conveyance was made to defendant Martha McIntire a quitclaim deed was made from said Jenison and wife to defendant Martha McIntire (and not to Emma Taylor, as alleged in the bill). Said quitclaim deed bears date the 27 of September, 1887, and it was delivered and recorded on the 4 of October, 1887. The consideration of $100 mentioned in said deed was paid to Mr. Jenison October 4, 1887, and he very gladly accepted it. This quitclaim was executed so as to cover and cure a defect in the deed from Jenison to Taylor, and also to enable said Martha McIntire to procure any rebate or drawbacks that might be given by the District authorities on account of the large bill paid for special taxes.

Defendant Martha McIntire is at present the owner of the lot. About three years ago she erected four brick houses thereon, two on the F-street front and two on the alley front. At that time the complainant, Mary C. Pryor, lived within 100 feet of the buildings and lived there all the time they were being erected, yet she never objected or gave notice of any claim whatever, nor did either of these defendants know that she ever thought she had any claim thereto until the filing of this bill.

The said houses were paid for by said Martha McIntire, who is an unmarried woman, and she receives the rents thereof.

We deny that Emma Taylor was a fictitious person. The defendants have no sister or relative by the name of Emma Taylor McIntire, as alleged. The said deed from Emma Taylor was
32 acknowledged before Justice of the Peace Helmick, who had known all of these defendant's sisters for many years.

These respondents are advised that, even if it were true, as alleged, that Emma Taylor was a fictitious person, the deed from defendant Jenison and wife of Sept. 27, 1887, to defendant Martha McIntire conveys the legal title to said Martha McIntire.

We deny that any secresy was used about the transfers. The trust was duly recorded within a few days after its execution and the other papers were recorded when the subsequent transfers were made.

We deny that any fraud was committed or any wrong done any of the parties named. The considerations were properly stated in the deeds, the transfers were made in regular form, and neither of these defendants *were* then aware or *are* now aware *of* any injustice, much less fraud, was even attempted or thought of by them or either of them in connection with this property.

12. We deny the allegations in the 12-h paragraph of the bill. In order to correct a defect in the acknowledgment of the deed

from Jenison to Taylor and to enable defendant Martha McIntire to secure any drawbacks that might be issued on account of the large amount of special taxes against the lot, a quitclaim was made, as above recited, from said Jenison and wife to said Martha McIntire (and not to Emma Taylor, as alleged), for which $100 was paid to said Jenison.

These defendants deny that E. A. McIntire appropriated the rents, as alleged, but defendant Martha McIntire, who has recently erected four small houses upon the lot, as above recited, paid for said houses and receives the rents thereof for her support.

And, further answering the bill of complainant, defendant
33 E. A. McIntire says that, acting under the advice of his counsel, he called upon his codefendant, Jenison, on or about the 18 day of November, 1890, to compare memoranda touching the allegations in the bill, and that on a subsequent evening said defendant, Jenison, visited defendant E. A. McIntire's house, and while there agreed that a certain statement of facts in the case should in justice to defendant E. A. McIntire be made known to the court, and thereupon he, the said Jenison, requested said McIntire to prepare an answer to the bill embodying such facts and he (Jenison) would sign it. Said McIntire did prepare such an answer and handed it to said Jenison, who, after carefully reading it and comparing it with his memorandum, made a few alterations therein in his own handwriting, and then stated that said answer was true in all respects, and asked that it be left with him for a day or two. Subsequently, to wit, on the 26th day of November, 1890, the said Jenison met the defendant E. A. McIntire, returned said answer, and stated that the attorney for the complainant in this cause had been to see him and had advised him not to file that answer or any answer to the bill; and, upon being again interrogated as to whether the answer was not true in every regard, the said Jenison stated, "I know the answer to be true. I do not claim that any wrong was done, but the attorney on the other side advised me not to answer."

The answer alluded to and which was in defendant Jenison's possession for several days and amended in his own handwriting is hereto annexed, and is prayed may be read as part of the answer.

1, 2, 3, 4, 5, 6, & 7. Answering the amended bill of the complainant filed November 28, 1890, these defendants say paragraphs 1, 2,
3, 4, 5, 6, and 7 are identical with similar numbered para-
34 graphs in the original bill, and are believed to be fully answered above.

8. We deny that the sale alluded to was made by Trustee McIntire "really in his own interest." We deny that any "fraudulent misrepresentations" were made to complainant, her late husband, and to Jenison, or to either of them. We deny that any deed was made to said Jenison or any other person for "a pretended consideration," and that a deed to Jenison was kept from record unknown to said Jenison, as alleged. The deed to Jenison was for the con-

sideration of $806, the figure at which the *the* property was struck down to him at the public sale.

9. We deny the allegations in the 9th paragraph of the amended bill, except that a deed of trust was negotiated by said Jenison to pay taxes, expenses of sale, &c., and afterwards said Jenison conveyed the property to Emma Taylor, substantially as stated on page 5 of this answer.

These deeds were executed voluntarily by said Jenison. We deny that McIntire induced Jenison to execute a quitclaim to Emma Taylor or to any person. We deny that Jenison ever did execute a quitclaim to Emma Taylor, as alleged. Said Jenison did, however, execute a quitclaim deed to Martha McIntire, as particularly set out on page 6 of this answer.

10. We deny the allegations made in the 10 paragraph of the amended bill. We believe we have fully answered them on pages 6 and 7 of this answer.

11, 12. Paragraphs 11 & 12 of the amended bill are similar to paragraphs 11 & 12 of the original bill, and we believe we have fully answered them heretofore in this answer, on pages 6, 7, and 8.

35 *Answers Made by Defendant Martha McIntire to Interrogatories.*

1. Emma Taylor was a Philadelphia lady who lived for awhile in Washington, D. C., but is now living in the West.

2. I have seen Emma Taylor a number of times. I paid her the exact amount named in the deed to me.

M. McINTIRE.

And having fully answered the several paragraphs in the original and amended bills, these defendants now pray that they may be dismissed with their costs.

EDWIN A. McINTIRE.
MARTHA McINTIRE.

* * * * * * *

36 *Answer of Defendant Hartwell Jenison to the Bill in the Above-entitled Cause.*

1. I have no knowledge of the residence of the complainant.

2. I admit the residence of the defendants to be as alleged.

3. I admit the third paragraph of the bill.

4. I admit that the deed of trust was executed as alleged, with this exception: that it was executed by the complainant and her husband.

5. I have no knowledge of the allegations in paragraph 5.

6. I admit the advertisement as alleged, except that I believe it read part of lots 21 & 22.

7. I deny that the complainant's husband became the purchaser, as alleged. On the contrary, on the 9th of June, 1881, I directed Mr. McIntire in writing to bid in the property for me (in the event of my not being present at the sale) for an "amount to cover loan,

taxes, and expenses," and it was reported to me that evening of the sale or the next day thereafter that the property was "knocked down" to me for $806. A deed was made to me on June 28th, 1881, and on the 29 of June, 1881, my wife and I made a deed of trust to Edwin A. McIntire, trustee, for $425 to pay the amount for which the property was bid in, less the amount of the note I held. I have no knowledge of the other allegations in paragraph 7.

8. I deny that the sale was made without my knowledge, although when recently asked about — I admit that the circumstance
37 had entirely slipped my memory, for I had long since entirely dismissed all thoughts on the subject. I was satisfied that I had been treated right. I parted with the property and thought nothing more about it.

I gave a written authority to E. A. McIntire, trustee, in these words, endorsed on the deed of trust of Pryor & wife:

"Failure having been made to pay the note secured by the within deed of trust, the trustee is hereby authorized to advertise and sell the property at public auction.

Wash'n, D. C., May 25, '81.

H. JENISON."

The property was "knocked down" to me and a deed was made to me, and I thereupon executed a deed of trust. As stated in my answer to the 7th paragraph, all these matters were done in good faith.

9. I deny that a deed was made to me without my knowledge, authority, and consent or that it was kept secretly from me. I deny that I executed a deed not knowing its true significance. I deny that I did not know that the property had been sold under the trust or that the title stood in my name. I deny the allegation that I received no consideration for making said deed. It was made in consideration of the surrender to me of my note of $425, which was held against me. I deny that McIntire said the sum of $100 was all that was left of the proceeds of sale. He said merely that he was authorized to offer me that sum for a quitclaim, and I accepted it and gave the deed in good faith. I know of no fraudulent transactions in the premises.

10. I deny that the deed placed on record had been secretly kept without my knowledge.

11. I have no knowledge of the allegations stated in the 11th paragraph.

38-41 12. I deny that I executed any quitclaim to Emma Taylor. I did, however, execute one in good faith to Martha McIntire upon the payment to me of $100. This I did willingly and was glad to get the $100. I have no knowledge of any fraudulent representatives having been made to me. On the contrary, while I relied upon the judgment of my codefendant, Mr. McIntire, who was then as now a real-estate broker, I wrote him on April 13, '82, "I take it for granted that you have not effected any trade or exchange for my lot, and I presume there is not much prospect of making a sale before maturity of the trust deed. I do not think

there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on. Besides, I am not in a situation to carry it. I shall doubtless have to submit to a sacrifice by forced sale." Subsequently, as I did not desire to incur the additional costs of advertisements and costs of sale, nor, on the other hand, be held for any deficiency in the event of the sale of the property not realizing sufficient to pay my note, I agreed to transfer my right in the property upon the surrender of said note, and accordingly executed the deed of April 19, 1882, wherein the consideration is stated as $425, the amount of said note.

I have no knowledge of any statements made by codefendants with the complainant, as alleged.

And having fully answered the several paragraphs of said bill, this defendant now prays that he may be dismissed with his costs.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

* * * * * * *

42 *Testimony for Complainant.*

* * * * * * *

43 JANUARY 13, 1891.

* * * * * * *

James Ragan.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. State your name, occupation, and residence.

A. James Ragan; plumber; No. 813 5th street northwest, in this city.

Q. Are you acquainted with the complainant, Mary C. Pryor, and did you know her husband, Thomas Pryor?

A. Yes, sir.

Q. Do you know the property No. 108 F street northwest, in this city, which was at one time a coal yard?

A. Yes, sir.

Q. Do you remember a trustee sale at auction taking place there; if so, were you and Thomas Pryor also present?

A. Yes, sir.

Q. Did Thomas Pryor bid upon the property and was it knocked down to him; if so, at what price?

A. Yes, sir; I think it was knocked down to him, to the best of my recollection, but I do not remember the price.

44 Q. Was E. A. McIntire there?

A. I could not say, indeed, for I did not take particular notice. I just happened to be home at that time.

Q. Where was your home at that time and in what location as to this property?

A. No. 133 F street northwest, on the north side of the street, near the corner of 2nd street, while this property is on the south side.

Cross-examination.

By Mr. HENKLE:

Q. Were you at your house when the sale took place?

A. No, sir; I was standing on the adjoining pavement, in front of Mr. Johnson's house.

Q. Do you remember how many and who were present?

A. There were quite a number standing around, but I cannot remember now who. I think or have a faint recollection that I recognized Mr. Boarman being there that evening and speaking to him afterwards in a buggy. I was talking to my brother-in-law at the time—he has since died—and Mr. Johnson was there and some other persons, but I cannot remember who else, for it has been so long ago. I do not remember whether Mr. McIntire was there or not.

Q. Who was the auctioneer?

A. I do not recollect, for it has been so long ago.

Q. Do you know how the property was being sold, and whose?

A. No, sir; I was always under the impression that it was old man Madison's property, but I did not know who owned it at that time.

45 Q. Do you know when this sale took place?

A. No, sir; but it was several years ago.

Q. You do not remember whether it was before or after 1880 or 1879?

A. No, sir.

Q. You would not undertake to fix the time at all within five years?

A. No, sir; but I think it was longer than five years ago.

Q. Do you know who bid on the property?

A. No, sir.

Q. Did you hear it knocked down?

A. I probably did, but I do not remember.

Q. You cannot remember anything about it except a shadowy recollection of being at the sale?

A. Being at the sale; and I have a faint recollection that the property was knocked down to Mr. Pryor.

Q. Do you say it with any degree of certainty, or is it not merely a vague impression on your mind?

A. Yes, sir; for it has been so long ago, as a fellow says, and I had no interest in the matter at all, but just merely stopped down there, happining to be at home at the time.

Q. It was occupied then as a coal yard, and by whom?

A. Yes, sir; that is my recollection; and I understood that Mr.

Pryor had it, but whether the property belonged to him at that time or not I did not know.

Q. You knew Mr. Pryor?

A. Yes, sir; I knew him well for a long time.

Q. What kind of a man was Mr. Pryor; was he not an unusually intelligent man for a colored man?

46 Mr. MACKEY: Objected to as not responsive to the examination-in-chief.

A. I always thought he was a very intelligent man, but I could not say unusually intelligent, for I have come across a great many smarter than he, but he seemed to be an honest, industrious, hard-working man, and an intelligent man, so far as I could see or know.

Q. He understood his business and knew what he was doing?

A. He seemed to.

Redirect.

By Mr. MACKEY:

Q. Did you know anything about his education, whether he was an educated man or not, and what his capacity was to transact business or understand the "ins" and "outs" of conveyances of real property and executing deeds, etc.?

A. I could not say. He simply whitewashed for me, working around the house at odd jobs, and I knew him to be an honest and upright man, but I never transacted any other business with him.

JAMES RAGAN.

* * * * * * *

NOTE.—And now comes the witness James Ragan, this 17th day of January, 1891, and states that he is mistaken about Mr. Boarman being present at this sale, but that he saw him at another time and sale of the third house above where Pryor owned.

ALBERT HARPER, *Examiner.*

47 *Mary C. Pryor.*

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. You are the complainant in this case?

A. Yes, sir.

Q. Who was your husband?

A. Thomas Pryor.

Q. Do you remember an auction sale that took place of the property in question? If so, tell us all you know about that sale.

A. Yes, sir; we first saw the flag out in front of the property which we occupied then as a coal yard on F street in the morning between nine and ten o'clock; we did not know what it meant, and

then my husband went alone to see Mr. E. A. McIntire, but he did not see him; then Mr. McIntire came down there that day and my husband asked him about the flag being out there, and Mr. McIntire said that the trustee was pushing him and he was compelled to put the flag up and have a sale, but that he would allow my husband to bid it in and would knock it down to him.

Q. How was your husband to pay for the property?

A. Well, Mr. McIntire said that he would allow us a chance and would not be hard on us; so after the sale—I suppose it may have been a month and maybe not so long—Mr. McIntire came back and said that the trustee, "Harford" Jenison, was pushing him for
48 the money and he would have to push us; so my husband had two severe attacks, and Mr. McIntire said that he would take a small amount, as my husband's health was so bad that he had not a dollar to carry his business on and he had to close up; and then he agreed to pay him six dollars a month rent until the debt was paid.

Q. And then what?

A. And then convey the property to us.

Q. Was your husband present at the sale, and did he bid on the property?

A. Yes, sir.

Q. To whom was it knocked down and for what price?

A. Yes, sir; I think $750, to my slight recollection. I think you had a paper of the amount.

Q. Was the six dollars a month paid as rent or to go on the property?

A. Paid as rent, but it was to go on the bill; and when we could raise more than that, then we could pay more until the debt was paid, and then the property was to be conveyed to us.

Q. Were you there when they came to build upon the property? If so, what did you do?

A. Yes, sir; I slightly knew the builder at that time, because he had built a good deal in the neighborhood. His name, I think, was Lightfoot, or something like that.

Q. Was his name not Medford?

A. It may be Medford. But I asked him who bought the property and he said that he did not know exactly, but that Mr. McIntire employed him to build the houses. I says, "Why, if he sold, he never made it known that he sold the property," and I
49 objected and told him that the lot was mine.

Mr. HENKLE: I object to the conversation between the witness and the builder.

Q. Did you see Mr. McIntire at any time after the property was struck off to your husband and Medford came there to build?

A. I met Mr. McIntire in Judiciary square and he says, "What do you think of the sale?" I said that I did not know anything about it, and he says, "O, yes, you do;" and I said, "I could show you better than I could tell you," and he has never said anything to me about the property since in any way.

Cross-examination.

By Mr. HENKLE:

Q. How was the property being sold—for what reason?

A. Well, we borrowed some money on it from "Davie" McIntire and he died, and then his brother, Mr. E. A. McIntire, came in as the trustee.

Q. And the property was being sold to pay the debt under a deed of trust?

A. The time was not out to sell and he said they were pressing him and he was compelled to push us.

Q. Do you remember who were present at the sale?

A. A great many people at the sale at the time. Mr. Ragan was there and Mr. Jacobs and Mr. Albert Johnson and a colored man who worked in the coal yard with my husband, named Robert Holliday.

Q. Do you remember who the auctioneer was?

A. Mr. Cole.

50 Mr. MACKEY: Mr. Cole or Mr. Coldwell?

WITNESS: Something like that.

Q. You think Mr. Cole was the auctioneer?

A. Yes, sir.

Q. Did anybody bid on that property besides your husband?

A. I do not know who else did. I was not at the sale.

Q. Where were you?

A. I was in my house, at the front window, and could see. It was just across the alley and they had not built there then.

Q. Could you see what was going on there?

A. O, yes; they had not built there then and I could see.

Q. The sale took place on F street?

A. Yes, sir; but there is an opening there and we can see there even now, after those houses have been built up there. It was not built up then and there was nothing to obstruct the view.

Q. Could you hear and see everything?

A. Yes, sir; I was as far back as the alley, which is about 130 feet deep and about 15 feet wide, and they were in front, but I did not go where the gentlemen stood.

Q. You were, perhaps, 150 feet away?

A. No, sir; not as far back as that, because I was standing kind of listening. I was not with the crowd of people; the auctioneer was front and I was back.

Q. Did you hear the auctioneer knock the property down?

A. Yes, sir.

Q. What did he say?

A. He said, I knock it down for $750.

51 Q. Did he say who bought it?

A. Yes, sir; my husband.

Q. Do you remember hearing that?

A. Yes, sir.

Q. Do you remember whether your husband made any deposit—that is, did he put $100 in the hands of the auctioneer?

A. No, sir; I do not think he did.

Q. Do you not know that he did not have $100 at that time?

A. I do not know what he had, but I do not think he paid it.

Q. Did any one bid against your husband?

A. I suppose some one did. Mr. Ragan came there to buy this property, but he said he would not bid against Mr. Pryor, knowing that he was afflicted, and the neighbors did not go against him. I do not think anybody bid against him, because Mr. McIntire told us that he would allow him a chance to bid on the property and have it knocked down to him.

Q. When did Mr. McIntire tell your husband that?

A. On the morning of the day of the sale, and the sale took place at five or four o'clock in the evening.

Q. Did he tell him that he would not allow anybody else to bid against him and that it should be knocked down to him whether or no?

A. Yes, sir. He said the trustee was pushing him and he was going to give us time and not be hard on us.

Q. Did he say at that time what time he would give him?

A. He did not specify any certain time. He said we could pay him off in small notes, and we did pay him along until my husband's health failed and he was taken down.

52 Q. Did he take any notes from your husband after the sale?

A. I never seen him take any. He came the next week or two or three days after the sale and asked my husband to ask me for my deed. He wanted to see it, my husband said, and I kind of objected at first. I was eating breakfast, but I got the deed and gave it to Mr. McIntire, and he took it away and I have never seen it since, though it is recorded in the city hall.

Q. How much did your husband pay on the debt?

A. We borrowed the $500 for two years, and he paid $450.

Q. You mean that you paid to Mr. McIntire $450 after the sale?

A. No, sir; we have not paid that.

Q. I am talking about after the sale.

A. We paid by the month for so many months at six dollars a month as rent, but it was to be applied on the debt. After my husband died Mr. McIntire sent a man there named John Mack, who rented it for a year and a half, and Mr. McIntire received that rent and never made any returns of it to us.

Q. How much did you and your husband pay?

A. A good deal; over $72 of rent, but I disremember.

Q. When did your husband die?

A. On the 4th of July last year.

Q. Did you take receipts for the money you paid; if so, where are they?

A. Yes, sir; Mr. Mackey has them.

Mr. MACKEY: Here they are.

53 Q. These are the receipts you took?

A. Yes, sir; sometimes I got them at Mr. McIntire's office

and sometimes his clerk would come down and bring them, but most of the money was paid at Mr. McIntire's office, over his desk.

Q. At the time you say that Mr. McIntire agreed that your husband should rent the house and pay as he could on the debt, did he give any writing to you or your husband?

A. I never seen any except those receipts.

Mr. MACKEY: I here give those receipts in evidence.

(NOTE.—And the same are herewith filed in evidence together and marked Exhibit A. H. No. 1.)

Redirect.

By Mr. MACKEY:

Q. What do you do for a living?

A. I used to sew, but in these late years I have been washing, and I rent out a couple of rooms in my house.

Q. Do you know what a deed of trust is?

A. I could not fairly say that I do; I judge a deed of trust is to secure a debt—to hold it until a debt is paid.

Q. Do you know who a trustee is in a deed of trust?

A. The one that the money belonged to, is it not?

Q. Did you ever have any other transaction except this one with Mr. McIntire?

A. That is all. I never signed any other deed of trust.

Q. There were several deeds of trust on this property. You made one, and then you gave another, did you not?

54 A. None other that I know of but this one in which he said "Harford" Jenison was the trustee.

Q. Who loaned the money in this instance?

A. We borrowed it from Mr. "Davie" McIntire, his brother; but Mr. E. A. McIntire said that "Harford" Jenison was the trustee; that he was the one that loaned the money, and that he was pushing him to push us. We got the money for two years, but he did not give us a year.

Q. What did E. A. McIntire have to do with the sale?

A. Well, he said he came and took his brother's business in hand.

Q. Do you know now who the trustee was in the deed of trust when you first got the money?

A. I think Mr. Warner was present at the time and had something to do with it.

Q. Who was named as trustee in the deed of trust?

A. I heard "Harford" Jenison.

Q. Was he the man who advanced the money?

A. That was the man.

Q. He was the one you made the note to?

A. Yes, sir.

Q. Now, you say that you paid six dollars a month rent. What was to become of the rent; was it to be applied on the——

A. (Interposing.) On the debt. We were to pay as much as we could if he got a good price offered. Then he was to sell if we agreed to it and pay himself and return us the balance, but he made no returns.

Q. And then, when you got the debt paid, what was to be done?

55 A. The property was to be made to us; that was the understanding with Mr. McIntire, when we were all present, when he came down there that day after my husband had been up to see him. I was there and heard the conversation between him and my husband at the gate of the coal yard, where he stopped in his buggy.

Recross.

By Mr. HENKLE:

Q. You say that you never signed any other deed of trust on that property?

A. No, sir.

Q. Do you know your handwriting when you see it?

A. I judge I would know it.

Q. Will you look at that and say whether that is your writing?

A. No, sir.

Q. Is not that your handwriting?

A. I do not know. I do not know anything about this deed of trust.

Q. Is not that your handwriting?

A. It may be; I do not know.

Q. Do you not know whether you wrote it or not?

A. No; I might know if I heard it read.

Q. Can you not tell whether that is your signature or not?

A. No, sir.

Q. Does it not look like your signature?

A. It might be.

Q. Is it not?

56 A. I never signed for no deed of trust.

Q. How do you know that is a deed of trust?

A. You asked me if I did not sign for a deed of trust.

Q. I simply asked you if you signed that paper.

A. You said a deed of trust.

Q. I asked you if you signed that paper.

A. I do not remember signing it. I do not remember signing it in that style.

Q. Is that your signature or not?

A. It may be; that is the first one, I guess; when we first borrowed the money it was in May. We did borrow $500; that part is right.

Mr. HENKLE: I here give that deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 2.)

Q. Look at that signature and say whether that is yours.
A. I wrote that a little different.
Q. I wish you to state whether that is yours.
A. That is my name.
Q. Is that your signature?
A. Well, I do not like to say that it is my signature to a thing I never done. I might say this was and it be something wrong.
Q. I want to know whether that is your signature or not.
A. I suppose I wrote it, but I do not know positively whether I wrote it or not.

Mr. HENKLE: I here give that deed in evidence.

57 (NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 3.)

Q. Look at that and say whether that is your signature or not.
A. I remember nothing of these papers. I do not remember this.
Q. Is that your signature?
A. It may be.
Q. Well, what do you say; whether it is or not?
A. I cannot say.
Q. You do not know whether it is or not?
A. Of course, it will have to go as the others.
Q. Well, do you say it is yours? Just answer whether it is your signature or not; whether you wrote it or not.
A. I do not remember writing it.
Q. I am not asking you whether you remember writing that; I ask you to look at that and say whether it is your signature.

Mr. MACKEY: Objected to because the witness does not profess to be an expert in handwriting, and she says that she does not remember writing that signature.

A. It may be mine. It has been so long that I do not remember way back everything; but all I remember I remember in my mind, and I do not remember everything so perfect as you ask me.

Mr. HENKLE: I here give that deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and
58 marked Exhibit A. H. No. 4.)

Redirect.

By Mr. MACKEY:

Q. How many times a year do you sign your name?
A. I do not know.
Q. Well, about how many times a month? Do you sign it once a month or once a year?
A. I do not write often unless some business calls me to do so.
Q. Do you know how to write; can you write anybody else's name besides your own?
A. Yes, sir.

Q. Have you any of your writing?
A. Not with me.
Q. Have you any letters of your own at home written eight or nine years ago?
A. I do not know; probably I might have. Since my husband's death the house has all been stirred up and rented.
Q. Can you write letters?
A. I can; but I very seldom write.
Q. How often do you sign your name?
A. I do not sign it unless some business calls me to sign it.
Q. Do you sign your name as often as once a year?
A. Probably I do.
Q. Do you suppose you have signed it in the last ten years ten times?
A. I have done a great deal of business in the last ten years.
59 Q. Have you signed your name ten times in the last ten years?
A. I do not know.
Q. The first person you borrowed this $500 from was Mr. McIntire?
A. Yes, sir; I think his name was David McIntire.
Q. You say Mr. Warner was the trustee.
A. I think Mr. Warner when we borrowed that $500 was present. I think there was something about Mr. Warner, the real-estate man.
Q. You do not know whether he was in it or not?
A. No, sir; I do not, but I think we had a paper that Mr. Warner was in it.
Q. Where did you go to borrow that first $500?
A. I think we went to Mr. Warner's office.
Q. You gave your note for it?
A. Yes, sir.
Q. When that note became due——
A. (Interrupting.) We borrowed it in May for two years, and he died inside of the time.
Q. Did you pay that note?
A. I believe we paid $50 and lifted it.
Q. What do you mean by lifting it?
A. Renewed the note.
Q. And then you signed another deed of trust?
A. I judge we did.
Q. Is this the one you arranged with Mr. McIntire?
A. We must have arranged with him after his brother died, as he took the business.
60 Q. How long was the last note to run?
A. I suppose the two years out.
Q. That was the first year's note. I am speaking of the last note.
A. He did not state any particular time.

Q. Did you ever sell this property to Mr. McIntire for five dollars?

A. No, indeed.

Q. Do you know Martha McIntire?

A. Who is she? His wife? I never heard of her that I know of.

Q. Did you ever agree to sell her this property for five dollars?

A. Never in my life. I never seen her.

Q. Do you remember Mr. McIntire coming to you about a month before the sale and getting you to sign a paper like this one which is marked "Exhibit A. H. No. 3"?

A. No, sir.

Q. Do you remember ever going with him to the office of Mr. Helmick, a justice of the peace?

A. No, sir; I never went before any squire, except Squire Mills, when we borrowed that $500.

Q. What one did you go before when you signed the second one?

A. None that I know of. I never signed any other.

Q. You do not remember going before a justice of the peace when you signed the second one?

A. No, sir.

61 Q. If you were shown a paper and asked whether that was your signature made ten years ago could you tell it?

A. I do not know.

Q. Can you tell how your signature was made ten years ago?

A. I could not exactly say that I could tell; sometimes we write better and sometimes we don't write so good; that is just the way of it. At the time we do business we do not think it will ever come up again, but we should be particular.

Q. Who attended to the business about the house when your husband was alive, you or your husband—I mean who borrowed this money on the house?

A. My husband borrowed it. I think my mother went, too, but I am not sure; anyhow I had to go and sign.

Q. Who made all the arrangements?

A. He did, I think.

MARY PRYOR.

* * * * * * *

Adjourned to January 16, 1891.

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62 *Thomas P. Jacobs.*

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. What is your residence?

A. No. 111 F street northwest, in this city.

Q. Do you remember the premises that used to be No. 108 F street northwest, in this city, about nine or ten years ago?

A. Yes, sir.

Q. Who then occupied it?

A. It was then occupied by a man named Pryor. It was a vacant lot and he had a coal yard there and a little frame place on the back end of it.

Q. Did you know Pryor?

A. Yes, sir.

Q. Do you remember the circumstances of an auction sale taking place there nine or ten years ago?

A. Yes, sir; I was coming along—just going home in the evening—and I had driven my horse in the yard, on the opposite side, and as I came out on the pavement I saw Jim Ragan coming away from the sale there, and after exchanging the time of day, etc., I asked him who bought it and he said that Pryor bought it in.

Mr. HENKLE: Objected to as hearsay.

Q. Was the crowd there at that time?

63 A. Yes, sir; there were ten or fifteen people around there—children and men.

Q. How long after the sale was that?

A. When I went into my yard they were still crying the sale, and after putting my horse up I came out on the pavement on the opposite side of the street and met Jim Ragan.

Q. The sale was just over then?

A. Yes, sir.

Q. Have you ever talked with Mr. Ragan about this case?

A. No, sir. I did not know anything about the matter at all until today. Mrs. Pryor came to my house once and said something about it. That is the first I knew of it. I did not know what I was summoned here for.

Mr. HENKLE: I object to all the statements of the witness as to what was said to him by Ragan upon the ground that it is hearsay, incompetent, and irrelevant, and waive cross-examination.

THOMAS P. JACOBS.

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Mr. MACKEY: Come in, Holliday and Johnson.

Mr. HENKLE: Let those witnesses be separated while testifying.

(NOTE.—The witnesses are separated.)

And thereupon—

64 *Albert Johnson.*

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Direct examination.

By Mr. MACKEY:

Q. What is your business?

A. I am a plumber.

Q. Did you know Thomas Pryor in his lifetime?

A. Yes, sir.

Q. Do you remember where he lived on F street on a vacant lot where there was a coal yard?

A. Yes, sir.

Q. Do you remember the circumstances of an auction sale taking place there some nine or ten years ago?

A. Yes, sir; I was there at the sale.

Q. Do you remember who the property was knocked down to?

A. It was knocked down to Pryor.

Q. Did you have any conversation with Pryor before the sale in respect of who was going to buy the property?

A. I heard him say before the sale that he expected to bid it in.

Mr. HENKLE: I object to this testimony as hearsay, incompetent, and irrelevant as to what Pryor said to him, and, without waiving such objection, proceed to the—

Cross-examination.

By Mr. HENKLE:

Q. Where did you live?

65 A. My business was here between E and F and 2nd and 3rd streets northwest, in this city, and I have been doing plumbing work all the time for eighteen years in the District.

Q. How did you happen to be at that sale?

A. Him and I was always friends together and lived close by, and I bought my wood and coal from him all the time.

Q. Did you know that there was going to be a sale?

A. No, sir; not until some time before it was sold. I always heard him talk about it.

Q. Are you sure that you were at the sale?

A. Yes, sir.

Q. Do you remember who else was there?

A. I never took notice who was there. It has been some time ago. I know myself was there, and Holliday was there, and several more people around there, but I did not keep any remembrance at all, for I never kept them in view.

Q. Who was the auctioneer, or was offering the property for sale?

A. I forget that, too. I never kept track of it.

Q. Do you know what kind of looking man he was?

A. No, sir.

Q. Do you not remember anything about the auction?

A. I never kept it in my mind. I was there, though, but it has been a long time ago.

Q. Do you know this gentleman (the defendant E. A. McIntire) sitting here?

A. I have seen him oftentimes.

Q. Was he there?

66 A. I cannot swear to that.

Q. How do you come to recollect that it was knocked down to Pryor?

A. I was there close enough to hear it.
Q. Who said it was knocked down to him?
A. I was in the crowd and heard him cry out that it was knocked down to Pryor.
Q. Did you hear anybody bid on the property?
A. Yes, sir; some few bids.
Q. Who bid?
A. I did not keep that in my head.
Q. You really do not know anybody that bid on the property?
A. I could not call their names right away.
Q. Did you see or hear anybody bid?
A. There was so many people there at that time and I heard them bid, but I do not know who it was.
Q. What was the bid?
A. I could not tell.
Q. You heard somebody make a bid?
A. Yes, sir.
Q. More than once?
A. Once or twice.
Q. Was that Pryor?
A. I did not hear Pryor say anything.
Q. Do you know whether he bid any or not?
A. I do not know.
Q. It was his property being sold?
A. It was, sure.
67 Q. He would not be likely to bid on his own property, would he?
A. I have seen cases of many people bid on their own property.
Q. Did you hear him bid?
A. Well, I was not right in the crowd, but I heard it cried out that the property was knocked down to Pryor.
Q. You did not hear him bid?
A. No, sir.
Q. That is all you know about it?
A. Yes, sir.

Redirect.

By Mr. MACKEY:

Q. Since that sale and until now have you been asked anything about it?
A. No, sir; not until a few days ago.
Q. You never carried it in your mind?
A. No, sir; nobody asked me about it until here the other day.

his
ALBERT x JOHNSON.
mark.

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Robert Holliday.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Where do you live?

68 A. In Union alley, between D and E and 1st and 2nd streets northwest, in this city.

Q. How far from this place which used to be a coal yard that Pryor used to keep?

A. Well, about a square.

Q. Did you know Thomas Pryor?

A. Yes, sir; for several years. I worked there some time for him; I reckon over a year.

Q. Do you remember an auction sale that took place there about nine or ten years ago?

A. Yes, sir. I was standing at the gate at the time of the sale, on the sidewalk, when they bid.

Q. You heard the auction sale going on?

A. Yes, sir.

Q. Do you remember to whom the property was knocked down?

A. Well, it was struck off to Pryor. I was standing right at the gate.

Cross-examination.

By Mr. HENKLE:

Q. How do you know it was struck off to Pryor?

A. I heard them call his name.

Q. Who called his name?

A. I do not know who. I did not know the person that was talking, but I heard him strike it off to Pryor.

Q. That is all you know about it?

A. Yes, sir.

Q. Did you hear anybody bid?

A. I heard him bid and several others that I did not know.

69 Q. Then you heard somebody say it was struck off to Pryor?

A. Yes, sir.

Q. Which gate did you stand at?

A. At the front gate. I was standing on the sidewalk and there was some people jam up to the gate where I was standing in the front entrance.

his
ROBERT x HOLLIDAY.
mark.

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Adjourned to January 20, 1891.

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Edwin A. McIntire.

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Direct examination.

By Mr. MACKEY:

Q. You are the husband of Letitia F. McIntire?
A. Yes, sir.
Q. Is she in the city?
A. She is not.
Q. How long has she been away from the city?
A. A few days.
70 Q. When is she expected to return?
A. I could not tell you.
Q. How far is she from the city?
A. 140 miles.
Q. At what place?
A. I could not tell you where she is just now, but in the neighborhood of Philadelphia.
Q. Have you in your possession or can you produce the deed purporting to have been executed by Emma Taylor to her, dated May 31, 1883, and recorded in Liber 1041, folio 277, of the land records of the District of Columbia, conveying lot 81, in square 276?
A. I do not know where that square is. If you tell me where the square is I can tell you more about it.
Q. Square 276 is between 12th and 13th and R and S streets northwest, in this city, and lot 81 is on the south side of S street.
A. No, sir; she never had that deed and she cannot produce it.
Q. Do you mean to say that Emma Taylor never conveyed to her that piece of property?
A. I have no recollection of it at all. I think that is conveyed to Emma T. McIntire.
Q. Do you mean to say that your wife does not own that property now?
A. No, sir. It was in her name at one time.
Q. Do you say that no deed was made to her by Emma Taylor of that property?
71 A. I do not know; I will see about that.
Q. Whether the deed was made to her or not, she never claimed it?
A. Not to my knowledge. I can say, of course, she does not claim it now.
Q. I see written on the margin of the record of the deed by Emma Taylor to Martha McIntire of the property in this suit that the original deed was delivered to E. A. McIntire. Have you that deed in your possession?
A. I may have; I do not know.
Q. If you have, will you produce it?
A. Certainly.
Q. If you have not it and your sister, Martha McIntire, has

it, can you procure it from her and produce it at the next session?

A. Yes, sir.

EDWIN A. McINTIRE.

* * * * * * *

Mr. MACKEY: Solicitors for the complainant request solicitor for the defendant Martha McIntire to produce at the next session the deed of Emma Taylor to her, dated May 31, 1884, conveying the property in question, and also request solicitor for the defendant Edwin A. McIntire to produce any letters or papers signed by Emma Taylor or written by him to her in reference to this transaction, and also any checks or receipts passing between them in relation thereto.

ALBERT HARPER, *Examiner.*

72 *Hartwell Jenison.*

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Direct examination.

By Mr. MACKEY:

Q. You are named as one of the defendants in this suit?

A. Yes, sir.

Q. Did you know Thomas Pryor?

A. No, sir; I never saw him that I am aware of.

Q. Do you know Edwin A. McIntire?

A. Yes, sir.

Q. The bill states and your answer admits that you made a loan of $450 to Thomas Pryor and took the joint note of himself and wife, secured by deed of trust from them, upon the property described in the bill. Will you state the circumstances of that transaction, when it originated, how the loan was made, and through whom?

A. The transaction was more through Mr. McIntire's brother, who was then a clerk in the department. I then had that money to loan and he said that he could place it for me, so that I had nothing to do with the transaction further than to receive the note and deed of trust for $500, and at the maturity of that note Pryor paid $50 and renewed it for $450.

Q. Who attended to that second transaction?

A. Mr. Edwin A. McIntire.

Q. How did you become acquainted with Edwin A. McIntire?

A. I do not know. I had known him incidentally for some time.

73 Q. Who attended to the collection of the interest and principal of the first note?

A. Mr. Edwin A. McIntire.

Q. And then, when that first note became due, you say Pryor curtailed it by paying $50 and a new note was executed?

A. Yes, sir.

Q. I believe you also said that Edwin A. McIntire negotiated or attended to that matter for you?

A. Yes, sir.

Q. Who collected the interest on that second note of $450?

A. Mr. Edwin A. McIntire. The whole transaction came through his hands. It might be proper for me to say in reference to that second note for $450 that after it was given I made an assignment of it to a Mr. Hitchcock, and at the maturity of that note I understood that he had not received the interest, and I told him that rather than he should lose anything I would relieve him from any loss which might be sustained in the matter, and I assumed the indebtedness myself. I do not know whether or not there was any reassignment of the note passed between us, but it was the understanding between Mr. McIntire, Mr. Hitchcock, and myself that I should assume the note myself and protect Mr. Hitchcock.

Q. And when that note fell due, what did you do?

A. At that time Mr. McIntire notified me that there were improvement taxes also against the property, which, together with the incidental expenses, would about equal the face of the note. I told Mr. McIntire that I was not prepared to carry that additional amount and that I would place the matter entirely in his
74 hands, to be disposed of to the best advantage, and that if anything could be realised out of it he could turn it over.

Q. Did Mr. E. A. McIntire state anything to you in reference to the ability of the Pryors to pay that note?

A. I understood from Mr. E. A. McIntire that Mr. Pryor, whom I never saw, had refused to make any further payments on the note.

Q. Was that trust foreclosed?

A. Yes, sir.

Q. You may state whether or not you had a conversation or, rather, received a visit from Mr. E. A. McIntire after the filing of the original bill in this case, and what he said to you at that time.

A. Well, to state a little in advance of that I might say that I had made inquiry of Mr. E. A. McIntire to refresh my memory a little as to date and details, which he said he considered were not essential, as he did not think anything would grow out of the trial; that there would be no trial; but after notice was served he informed me that my answer to the bill of complaint was quite different from the facts and gave me an opportunity of making reference to papers. He did refresh my recollection in regard to the matter by giving me the data and showing my written endorsement authorizing the sale on the deed of trust.

Q. Had you any recollection up to that time of having ordered the sale?

A. No, sir; my memory was rather blank from the fact
75 that I had placed the whole matter in his hands and the interval of years.

Q. Were you present at the sale?

A. I was not.

Q. Did you ever see the deed made by Mr. McIntire to you of that Pryor property; if so, when and what became of it?

A. Yes, sir; after its execution; but I do not know what became of it. It was left in the possession of Mr. E. A. McIntire to be recorded, as I supposed, but I do not know whether it was or not.

Q. After the execution of the deed to you by Mr. McIntire what was the next occurrence in this transaction?

A. The next occurrence was to make provision for the additional amount of $425, which Mr. McIntire stated was required to pay the taxes and commissions and expenses, and I gave a note for that amount to Emma Taylor and executed a deed of trust to secure it.

Q. What became of that note for $425?

A. I do not know; but I took it for granted, of course, that it was applied by Mr. McIntire to the liquidation of the indebtedness.

Q. Did you ever see Emma Taylor?

A. No, sir.

Q. Did you ever have any conversation with her?

A. Not at all.

Q. Did you ever see anybody who said that they had seen her except Mr. McIntire?

A. No, sir.

76 Q. Why did you execute a deed of conveyance to her of the property?

A. Well, I was informed by Mr. McIntire that there was not much prospect of any sale—that is, that anything could be realized which would more than cover what I expected—and I did not wish to carry the obligation any longer, and I told him that it was better to part with the property and wipe the thing out, and there was an understanding between Mr. McIntire and myself that in case of any favorable transaction, if anything could be realized from it, I would get the benefit of it if he found a favorable opportunity of disposing to advantage of the property.

Q. When the Emma Taylor note fell due for $425, then what was done?

A. Then that deed of conveyance was made to her, for the reason that I had no means of redeeming the property.

Q. Had Mr. McIntire stated to you whether or not he could sell the property?

A. No, sir.

Q. Did he state whether there was an opportunity for such a favorable transaction?

A. No, sir.

Q. Did he state the contrary of that?

A. No, sir.

Q. What I want to get at is what was stated to you by Mr. McIntire, if anything, to induce you to make the conveyance to Emma Taylor instead of taking up the note for $425.

A. Well, perhaps, it was more on my own part in saying
77 that I did not wish to carry the obligation any further. If the property could be sold to cover this additional expense that I did not wish to carry it.

Q. Had you made any effort to sell the property?

A. No, sir; it was left entirely in Mr. McIntire's hands and I had nothing to do with it.

Q. He did not bring you a purchaser or offer for the property?

A. No, sir.

Q. Did you ever see Emma Taylor at the time you executed the deed to her?

A. No, sir; I never met her.

Q. What was the consideration?

A. $425, I believe; to cover the amount of that note.

Q. Did you receive anything from Emma Taylor at all in consideration of that conveyance?

A. No, sir.

Q. Up to that time had you received any money from Mr. McIntire in respect of this $500 loan made to Pryor?

A. No, sir.

Q. What occurred after your conveyance to Emma Taylor of the property?

A. Nothing further until the quitclaim was given to Martha McIntire.

Q. State the circumstances under which that quitclaim was executed.

A. The only reason assigned by Mr. McIntire was, as I understood it, to perfect the title, and there were no attendant
78 circumstances than that the deed was prepared and I signed it.

Q. Did you receive a visit from Mr. McIntire shortly before the execution of that deed of quitclaim in respect of the execution of that deed of quitclaim to Martha McIntire?

A. Not that I recollect.

Q. What representation, if any, did he make to you in order to obtain that quitclaim?

A. Nothing further than that it was to perfect the title to make her secure in her rights against all claims.

Q. Did you know at that time that Martha McIntire was the owner of the property?

A. No, I did not; I knew nothing of any transfer to her of the property previous to that.

Q. Did he at any time state what the defect in the title was?

A. Well, in talking the matter over with Mr. McIntire when I called in reference to the data he mentioned that there was a little defect in the acknowledgment of the deed to Emma Taylor.

Q. What was the defect?

A. I think the acknowledging officer had stricken out that he was acquainted with my wife. We both had executed the deed.

Q. Did you receive any consideration at that time for the execution of the deed of quitclaim to Martha McIntire?

A. Well, perhaps a day or two afterwards Mr. McIntire came to the Treasury — handed me his own check for one hundred dollars.

Q. What explanation did he give you about that $100?

A. Nothing in particular that I recollect.

79 Q. Did he say what it was for?

A. In connection with that quitclaim.

Q. Was it given as consideration for executing the quitclaim?

A. Not that I understood. I took it as what had been realized out of the transaction—that is, I assumed it to be that.

Q. When you executed the quitclaim deed did he tell you that he would give you $100 for the execution?

A. No, sir; not at all.

Q. Did you execute it with the understanding that you were to receive $100?

A. No, sir.

Q. Were you expecting that $100 when he brought it around?

A. No, sir; I had not looked for it at all. It was something unexpected.

Q. Have you ever received any other money from Mr. McIntire or anybody else in respect of this transaction?

A. No, sir; the $100 was all that passed between us.

Q. Did Mr. McIntire ever make any returns to you of rents for the property?

A. No, sir.

Q. Did you know that the property was being rented?

A. I did not.

Q. To whom did you leave the entire control and management of this matter—that is, the collection of the note and interest and everything having anything to do with this property?

A. With Mr. Edwin A. McIntire entirely.

Q. What degree of confidence did you have in Mr. McIn-

80 tire at that time in regard to his statement to you?

A. Entire confidence.

Cross-examination.

By Mr. HENKLE:

Q. Before you filed your answer in this case, did you and Mr. McIntire have any interview with regard to what were the facts; if so, where did it take place?

A. Yes, sir; at his office.

Q. Did you go there at his request or of your own motion?

A. He had mentioned to me that the statements embraced in the bill were quite at variance with some of the facts.

Q. And he called upon you to see what your recollection of the facts was?

A. Well, he reminded me, and then I called to get the details or data.

Q. And then Mr. McIntire refreshed your recollection as to the circumstances and facts in the case?

A. Yes, sir.

Q. And after thus refreshing your recollection as to the facts they came to your recollection and you remembered them as facts?

A. Well, I cannot say that particularly, because it was *prima facie* black and white, while my memory was a blank in reference

to the data and details, owing to the interval of years and the fact that the matter was placed in his hands entirely.

Q. Was there any understanding between you that Mr. McIntire was to write up an answer for you?

A. No, sir.

81 Q. Did you and Mr. McIntire agree after conferring about it as to what the facts were?

A. We agreed, of course, as to the facts.

Q. Did you authorize him to write or have written for you your answer?

A. No, sir.

Q. Was it understood between you that he was to write out a memorandum of the facts and bring it to you?

A. He gave me a memorandum of an answer and suggested that perhaps I had better adopt that for my answer.

Q. What did you do with that?

A. I gave it back to him.

Q. Did you make any alteration in it?

A. No, sir.

Q. Did you not make some alteration in it?

A. Not that I am aware of.

Q. Please look at the paper which I now hand you, which purports to be the "answer of defendant Hartwell Jenison to the bill in the above-entitled cause" (and which is attached as an exhibit to the joint answers of the defendants E. A. McIntire and Martha McIntire), and state whether you ever saw that paper before.

A. In appearance it is similar to the memorandum that he gave me, but I could not say positively whether or not it is the same paper.

Q. You will see some interlineations in it. Are they in your handwriting?

A. I do see several in my handwriting.

82 Q. Look at the others and say whether they are in your handwriting.

A. I do not see any in my handwriting excepting the interlineation of the words "of the sale" and of the word "thereafter," which are in my handwriting.

Q. Where was that done?

A. I presume at the Treasury. Mr. McIntire left it there with me.

Q. What did you do with this paper after he left it with you?

A. I kept it in my possession for a couple of days, I should say.

Q. What was the understanding between you and Mr. McIntire as to what was to be done with it when he left it with you?

A. No understanding; he merely left it with me, as I understood, for me to say whether I approved of it and whether I thought it advisable to put that in as my answer.

Q. Did you read it at the time before he left it with you?

A. Yes, sir.

Q. What did you conclude at that time?

A. I told Mr. McIntire that I preferred to put in my own answer.

Q. What did you say to him, if anything, as to whether the statements in that paper were true or not?
A. I told him in substance that they were all correct.
Q. That was your recollection of them?
A. Yes, sir.
Q. Is it yet?
83 A. Yes, sir.
Q. And your understanding is that the statements in that paper are correct throughout?
A. That is in substance. I will not say in detail.
Q. They are substantially true and correct?
A. Yes, sir.
Q. When and where did you next see Mr. McIntire?
A. I think at his office.
Q. How long afterwards was that?
A. I think instead of being at the office Mr. McIntire called at the Treasury to know whether I had concluded to execute that paper.
Q. Whether you would adopt that paper as your answer is what you mean?
A. Yes, sir.
Q. What did you tell him?
A. Well, as I said before, that I preferred to put in my own answer.
Q. Did you give him any reasons why you preferred to put in your own answer?
A. Nothing further than that if these charges were sustained it put me in a different light than I ought to be in.
Q. Had you been visited by Mr. Mackey in the meantime?
A. I had.
Q. And had you shown him that paper?
A. I do not think I did.
Q. Had you told him of your interview with Mr. McIntire?
A. Yes, sir.
84 Mr. MACKEY: Objected to.
Q. Had he given you any advice about that paper?
A. Yes, sir.
Q. What did he advise?
A. He advised me that he would take the matter in his own hands.
Q. That he would represent you and file an answer for you?
A. Yes, sir.
Q. And he advised you not to file that one?
A. Yes, sir.
Q. Did you tell Mr. Mackey that the statements in that paper submitted to you by Mr. McIntire were true or substantially true?
A. I do not think I had anything to say on that matter.
Q. You employed Mr. Mackey as your counsel in the case?
A. Yes, sir.
Q. When did you employ him?
A. I could not give the date.

Q. Before he called to see you about your answer?
A. I think so.
Q. How long before?
A. I do not know.
Q. Where did you employ him?
A. Mr. Mackey saw me at the Treasury.
Q. He came to see you at the Treasury and you employed him there?
A. Yes, sir.
Q. He came to see you about this case?
A. Yes, sir.

85 Q. I show you the deed of trust from the Pryors to Edwin A. McIntire, already in evidence as Exhibit A. H. No. 4, and call your attention to the endorsement on the back of the paper, which reads as follows: "Failure having been made to pay the note secured by the within deed of trust, the trustee is hereby authorized to advertise and sell the property at public auction. Wash'n, D. C., May 25, '81," and purporting to be signed "H. Jenison." Will you look at that and say whether that is your signature?
A. Yes, sir.
Q. You did authorize that?
A. Yes, sir.
Q. Please look at the paper now handed you and state whether you ever saw it before.
A. That is my signature, and of course I saw the paper when I signed it.
Q. Do you recollect the paper?
A. Not particularly. I saw the paper as one of the reminders that Mr. McIntire showed me.

Mr. HENKLE: I here give that paper in evidence.
(NOTE.—And the same is herewith filed in evidence and marked "Exhibit A. H. No. 5.")

Q. Look at the paper now handed you and state whether you wrote it or not.
A. I did. It is my handwriting.

Mr. HENKLE: I here give that letter in evidence.

86 (NOTE.—And the same is herewith filed in evidence and marked "Exhibit A. H. No. 6.")

Q. I hand you this paper and ask you whether that was written by you.
A. Yes, sir. That is what I had reference to when I said that I desired to be refreshed.
Q. That is a letter addressed by you to Mr. McIntire?
A. Yes, sir.
Q. Did you receive a reply to that letter?
A. I do not remember. I cannot make out what the memorandum is on the back of that letter.
Q. Who was the attorney referred to in that letter that called upon you?

A. Mr. Boarman at the time I made that inquiry of him.

Mr. HENKLE: I here give that letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked "Exhibit A. H. No. 7.")

Q. What did you say was done with the deed that was made to you by Mr. McIntire as trustee for the property?

* * * * * * *

A. I suppose—I have no definite recollection about it, but I suppose I placed it in his hands to be recorded.

Q. Do you remember whether or not it was?

A. I could not say positively.

87 *A.* Whether it was left in your hands or not?

A. I am quite positive that it was not in my own hands.

Q. You say that you received nothing from the sale. I suppose you got back your note, did you not?

* * * * * * *

A. I suppose, of course, I received that, but I do not know what disposition was made of it, whether it was destroyed at the time—most likely.

Q. Well, you have never been called upon to pay it?

A. No, sir.

Q. You got that note and the $100?

A. Yes, sir.

Q. You knew where this property was, did you not?

A. No, sir; I do not think I went on the premises at all.

Q. You have been by it, have you not?

A. Since, I have a number of times; but I have not been for a number of years on that street.

Q. Did you not know where it was before the sale to you?

A. No, sir; I knew about the locality.

Q. Did you not know that Mr. McIntire was doing what he could to effect a sale of the lot?

A. I supposed so.

Q. Did you know that it was advertised for sale according to the instructions?

A. Yes, sir.

88 Redirect.

By Mr. MACKEY:

Q. You spoke of being called upon by me at the Treasury Department. Do you remember what my first call was for?

A. I do not know that I do specially.

Q. Was it not to gain information in regard to this transaction from you?

A. Yes, sir; certainly.

Q. You have stated that you had employed me as your counsel. Is not that employment solely to get for you, if possible, the amount of the note for the $500 loaned, which you loaned upon this property?

A. Yes, sir; it was entirely connected with that.

Q. And I have told you that Mrs. Pryor would gladly pay that, have I not?

A. Yes, sir.

Q. You have not received a dollar of that $500 that you loaned on the property, have you, but the $50 that was curtailed?

A. With the exception of the $100.

Q. Mr. Henkle asked you if you got back the note for $425, but I understood you to say that you never received a dollar of the $425 for which you made the note. Is that true?

A. I never did.

Q. After you had an interview with Mr. McIntire or Mr. McIntire had an interview with you, you had your recollection refreshed when you had an interview with me, had you not?

A. Yes, sir.

89 Q. Do you remember my stating to you that on the statements made by you to me I desired to amend the bill before you put in your answer?

A. Yes, sir.

Q. Do you recollect signing this paper filed in evidence as Exhibit A. H. No. 5 any more than from the mere fact that your signature is on it?

A. That is all.

Q. You know that to be your signature?

A. Yes, sir.

Q. But you have no recollection of signing that paper?

A. No, sir; until shown to me I should not have supposed that I executed the paper.

Q. Do you recollect anything like that paper?

WITNESS: Well, how do you mean?

Q. In this writing here you say: "You are hereby authorized to bid for me," etc. Do you have any recollection of having signed an order of that kind to Mr. McIntire outside of the fact of having the paper presented to you a short time ago with your signature to it?

A. No, sir; my memory is only refreshed by the evidence.

Q. Do you mean that you can recall the fact of signing it?

A. I can now by these papers.

Q. Had you any recollection of having signed the memorandum on the back of this deed of trust in evidence as Exhibit A. H. No. 4?

A. I had not previous to being shown to me by Mr. McIntire.

90 Q. Do you remember having signed the advertisement of sale of the property?

A. I do not think I do.

Q. I believe you have stated in your answer that so far as you are concerned you offer no objection to the vacation of the deed from Mr. McIntire to you or of the other deeds mentioned in the bill, provided you are reinstated in your trust?

A. Yes, sir.

Q. This paper, annexed to the joint answer of E. A. McIntire and Martha McIntire, purporting to be an answer prepared for you, do you know in whose handwriting it is?

A. I do not; I first thought it was in Mr. McIntire's handwriting, but I see it is not.

Q. Do you know at whose dictation it was written?

A. No, sir.

Q. It is stated in this paper for you that you were satisfied that you had been treated right. Do you mean us to understand that you are still satisfied?

A. I am satisfied that I was treated right upon the supposition that Mr. McIntire was acting honestly.

Q. In the statements which he made to you?

A. Yes, sir.

Recross.

By Mr. HENKLE:

Q. Did you ever have any doubt but that you had been treated right until Mr. Mackey called on you and tried to make you think otherwise?

Mr. MACKEY: Objected to because there is no testimony
91 that I ever tried to make him think so.

A. I had no reason to doubt that Mr. McIntire was acting for my interest in the transaction.

Q. What was the understanding between you and Mr. Mackey with regard to what he should have in case he was successful in this prosecution?

A. The only understanding that I had was that I should be satisfied if I received the face of the note.

Q. Then, Mr. Mackey promised you, did he not, that in case of success in this prosecution you should be paid the face of your note less the amount that you had received?

A. Yes, sir.

Q. Had you that understanding when you filed your answer?

A. Yes, sir.

Q. Who prepared your answer?

A. Mr. Mackey.

Q. Did you retain him as your counsel?

A. O, no; nothing of the kind.

Q. Did you pay him a retainer?

A. No, sir.

Q. Was there any agreement that you were to pay him anything?

A. No, sir.

Mr. MACKEY: I object to the line of examination going any further into personal matters between counsel and client.

Q. Was it not understood between you and Mr. Mackey that you were not to pay him anything for his services?

92 A. The understanding was that if he received the full value of the note I should be satisfied with the $350 and he would take the difference.

Q. Was it to be for services in this case?

A. That embraced all.

Q. What was the understanding about it?

A. That was the understanding, as I understood it, that I should receive my $350 if he recovered the full amount of the note, $450, less the $100 that I had received, and Mr. Mackey was to be paid nothing by me.

Redirect.

By Mr. MACKEY:

Q. The amount of your note from Pryor was $450?

A. Yes, sir.

Q. And you received $100 from Mr. McIntire?

A. Yes, sir.

Q. And that left $350 due you?

A. Yes, sir.

Q. And you have said that you would be satisfied if you got your $350 back and your counsel agreed to get that for you?

A. Yes, sir.

HARTWELL JENISON.

* * * * * * *

(Adjourned.)

93 MARCH 12, 1891.

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Charles Medford.

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Direct examination.

By Mr. MACKEY:

Q. State your name, occupation, and residence.

A. Charles Medford; contractor and builder; No. 1631 3rd street northwest, in this city.

Q. Did you build some years ago a couple of houses on F between 1st and 2nd streets northwest, in this city; if so, for whom?

A. Yes, sir; for Mr. E. A. McIntire. I do not remember the number of square and lot, but the houses are on the south side of F street between 1st and 2nd streets northwest, fronting north. I never built any other houses along there for Mr. McIntire, except two small ones on the rear of that same lot.

Q. When you went there to build did any one come and make any objection to your building; and, if so, who?

A. Yes, sir; I cannot remember the name, but it was a colored

man at first who lived on the east side of the lot, and he
94 wanted to know what we were going to do, and I told him that we were going to build houses there for Mr. E. A. McIntire. I do not know whether it was that same day or the next day a colored woman on the other side of the lot came down, Mrs. Pryor—that is, I was told that was her name (I did not know the parties themselves or anything about them)—and she wanted to know what I was going to do there. I told her that I was going to build some houses there. She wanted to know who for. I told her for Mr. E. A. McIntire. She said that Mr. McIntire did not own that lot nor nothing on it, and I told her that I did not know anything about that. She said that the lot belonged to her and some other parties connected in the family, and that Mr. McIntire had gotten it from them.

Q. Have you the contract which you entered into with Mr. McIntire to build those houses?

A. No, sir.

Q. Who has it?

A. Mr. E. A. McIntire has it.

Q. Who was with you, if anybody, in that contract for building those houses?

A. The contract was made with me and Mr. Waldron, who was my partner.

Q. Who took out the permit for building those houses?

A. Mr. Waldron and myself together, in our name as Medford and Waldron.

Q. Why did you take it out in your firm name?

A. Because Mr. McIntire told us that he did not care to have the permit taken out in his name, but to have the permit taken out in some one else's name.

95 Q. Was the permit taken out in your firm name as owner?

A. I expect it likely that the permit read that way because under the building regulations they always asked who is the owner, and you can give just whatever name you cho-se to and tell an untruth about it if you wish. I have had other parties ask us to do the same thing.

Q. Did you have any dealings with Martha McIntire?

A. No. I saw her. I did not know her at the time I made the contract with Mr. E. A. McIntire.

Q. With whom did you make the negotiations?

A. With Mr. E. A. McIntire, in his office.

Q. During the time of those negotiations did you ever see Martha McIntire?

A. No, sir.

Q. Who paid all the money which was paid?

A. Mr. E. A. McIntire.

Q. Was it paid by check or money?

A. As well as I can remember, it was all paid by check with the exception of a part of the second payment, when he gave me a hundred-dollar bill.

Q. By whom were the checks signed?

A. By Mr. E. A. McIntire.

Q. Do you remember — they were his individual checks or signed by him as agent?

A. To the best of my knowledge, they were signed by him alone, without any agent; I did not know of any agent at that time.

Q. Do you know what the contract price was for building the four houses?

96 A. Thirty-three hundred dollars.

Q. And you have been paid that amount?

A. No, sir; not quite that amount. We never had a final settlement and there is a dispute of a hundred and some odd dollars between us.

Cross-examination.

By Mr. HENKLE:

Q. Had you a written contract for the construction of those four houses; if so, in whose name was it?

A. Yes, sir; in the name of Mr. E. A. McIntire.

Q. Was it not in his name as agent for Martha McIntire?

A. It has been some time ago and I cannot swear positively. I have been trying to refresh my memory, and from the best of my recollection I think it was in the name of Mr. McIntire as agent, but I could not swear positively to that.

Q. In the same form as other papers executed by you?

A. Yes, sir.

Q. All in the same name?

A. Yes, sir—that is, we never had any other papers executed that I know of in the way of a contract except that one.

Mr. MACKEY: I object to any oral evidence of the contents of this contract, it being testified by the witness that the contract is in the possession of Mr. E. A. McIntire, unless it is produced or its disappearance accounted for.

Q. Where did you say that contract is?

A. I gave it to Mr. E. A. McIntire, into his hands in his office.

Q. Was there only one copy of it?

97 A. Two copies; he had previously one copy, and the one I had I gave to him.

Q. You did not preserve any yourself?

A. No, sir.

Q. Did you have a lawsuit about those houses—that is, sued by the District?

A. Not for the houses, but in regard to not getting out a permit for the rear houses. Suit was first brought against Mr. E. A. McIntire; he was released, and then Mr. Waldron and myself were hauled up.

Q. Upon what ground was Mr. E. A. McIntire released?

A. I do not know.

Q. Upon the ground that they were not his houses?

A. No, sir.

Q. Did he not make that defense?
A. That was his defense.
Q. And he was acquitted?
A. Yes, sir.
Q. You know that he made the defense that the houses did not belong to him, but to his sister, Martha McIntire?
A. Yes, sir; that was his defense.
Q. In that suit against you by the District did you not produce and put in evidence this contract between you and Mr. McIntire?
A. No, sir; the court required me to do it. A postponement of the trial was had to give Mr. McIntire time to find and produce that contract, because I gave the same evidence there in regard to that contract that I have here, but he did not produce it and said that he could not find it.

98 Q. Was Mr. McIntire a witness for you on that occasion?
A. No, sir.

Q. Mr. McIntire said he could not find it and you are quite sure that it was not produced?
A. Yes, sir; I am quite sure that it was not produced.
Q. But it was in the same form and having the same parties as other papers executed by you and Mr. McIntire to your knowledge touching that property?

Mr. MACKEY: I object to any oral evidence as to the contents of a written paper shown to be so far in the possession of the defendant E. A. McIntire.

A. Yes, sir.
Q. Did you after the houses were erected procure a paper to be signed by the materialmen who had furnished the material and persons who had worked upon the houses acknowledging that they had been paid and had no right to a lien upon the premises?

Mr. MACKEY: Objected to as calling for the contents of a written paper.

A. Perhaps I did secure one or two papers from some subcontractors to that effect, the most of whom were paid by Mr. McIntire.
Q. You saw the paper and got some signatures to it, did you not?
A. I do not know.
Q. You say that you got one or two?
A. I say I might have got one or two.

Q. Do you not know that you did procure one or two
99 signatures?
A. I cannot say positively.

Q. Look at the paper now handed you and say whether that is the paper.
A. I can recognize this paper only by it having the signatures of three of the men who worked on the houses.
Q. You recognize the signatures of three men who worked on the houses?
A. Yes, sir; only three.
Q. Did not the others furnish material or work on the houses?

A. Skinner was the excavator. William Harvey done the brick-work. I recollect the signature of W. H. West & Bro. They furnished no brick at all; I cannot call it to mind at all.

Mr. McIntire: They furnished fancy brick in front over the windows?

Witness: I cannot remember that at all; it might have been. They might have furnished some press-brick, but I doubt it very much. I remember that signature of W. H. West & Bro.

Q. Do you know the other parties who signed?

A. Cassell was the painter. I cannot recognize any others.

Q. Do you not remember that paper being gotten up and signed?

A. I cannot.

Q. Do you not remember any paper of that kind being signed?

A. No, sir; I cannot. It is customary in my transactions, but I did not have one made out all written in here by Mr.
100 McIntire, like this is. I recognize some of these signatures as genuine.

Q. You do not recall the fact that this was done?

A. No, sir.

Q. Do you remember that you were asked to have it done?

A. Well, I cannot say positively about that. I know that Mr. McIntire wanted to see everybody paid who worked on the buildings. Mr. Cassell, the painter, must have signed that in Mr. McIntire's office. That is where he got his last payment.

Q. How do you know that he got his last payment there?

A. I could not get the money to pay him; Mr. McIntire would not pay it until he got his signature to some paper, and we went to his office together.

Q. And he was paid in your presence?

A. Yes, sir.

Q. And he signed a paper in your presence?

A. Yes, sir. I did not pay any particular attention to any paper; I was satisfied that he was getting what was coming to him.

Q. Are you not satisfied that this is the paper he signed?

A. I cannot say.

Q. Is not that his genuine signature?

A. No doubt to my mind that is his signature. The other signatures I do not know, excepting those three.

Q. Do you not know the other names signed to it?

A. No, sir.

Q. Do you know whether they worked for you or upon those houses?

101 A. I do not know. I was trying to run them over in my mind to see whether they worked for me. I do not know that they worked for me.

Q. Did you get sash from Barber & Ross?

A. Yes, sir; but I do not see their names there.

Q. There it is, the first name there, is it not?

A. I cannot recognize that as the signature of Barber & Ross.

Q. You know that you got sash and blinds to put in those houses from Barber & Ross?

A. Yes, sir.

Q. But you cannot recognize that signature?

A. No, sir.

Q. Did you get slate mantels of Mr. Roche?

A. Yes, sir.

Q. Did you have any work done by Kohl & O'Donnel, tinsmiths, on the roofs of those houses?

A. I was trying to think who did the tinning for me. I was under the impression and still have it that Pepper did the tinning, though I may be mistaken about that.

Q. Did James F. Nolan & Co. do any concreting of the cellars?

A. Yes, sir.

Q. Did J. B. Suit furnish the latrobes and ranges?

A. Well, that I cannot say whether he did or not. I think Mr. Waldron, my partner, can give that part.

Q. Do you recognize the signature of Kohl & O'Donnell?

A. I do not think I could swear to that.

Q. Do you recognize the signature of Roche?

102 A. Judging from his signatures that I have seen of recent date, I could not recognize that signature as his writing.

Q. Do you recognize Mr. Cassell's signature?

A. Yes, sir.

Q. Do you recognize the signature of Nolan & Co.?

A. I do not know that I ever saw their handwriting.

Q. Do you know Mr. Suit's signature?

A. No, sir.

Mr. HENKLE: I here give that paper in evidence.

Mr. MACKEY: To the admission of which solicitors for complainant object as *res inter alia acta* and irrelevant.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 8.)

Q. You got the permit, you say, in the name of your firm?

A. Yes, sir.

Q. Did you deal with anybody having a party wall; if so, who?

A. Yes, sir; I cannot remember the name.

Q. Was it Mrs. Sarah Johnson?

A. I think that was the name.

Q. Did you settle with her for the party wall?

A. I endorsed the order after Mr. Entwisle had made it.

Q. Who paid her?

A. I think Mr. McIntire paid her. I know that the money did not come to me. It was deducted from my contract.

Q. Were you present when it was paid?

103 A. I cannot remember whether I was present or not.

Q. You know it was paid?

A. Yes, sir.

Q. Look at those papers and say whether they are not the bills and receipts for the payment of the money for that party wall.

A. I recognize two of those papers—the bills—as written, I think, by Mr. Entwisle.

Q. Do you recognize the receipts?

A. No, sir; I do not recognize the receipts. I recognize Mr. McIntire's handwriting.

Q. Do you know that they were settled with before you went on with the building?

A. No, sir; they were settled after I started the building.

Q. You know that they were settled with?

A. Yes, sir; I have every reason to believe that they were. The money was paid to them by Mr. McIntire. The money never passed through my hands.

Q. Are you able to say whether or not those are the receipts?

A. No, sir; I cannot say, because I do not know that lady's handwriting.

Q. Did you deal with another party for the west party wall?

A. No, sir; this one I have just referred to is for the west party wall.

Mr. McINTIRE: There were two—Johnson on the west and a colored man on the east.

104 WITNESS: That was only a foundation he put in himself.

Mr. McINTIRE: We used the east party wall all the way up and paid for it.

WITNESS: We built a new wall against that man's house.

Q. Did you deal with Luke Madison for the east party wall?

A. I believe now there was a party wall over there we used and paid for.

Q. I wish to know whether you or your firm received a check on the Central National bank payable to the order of Medford and Waldron, drawn by E A. McIntire and endorsed by you to this Luke Madison for that wall.

A. I cannot remember whether it was paid to me in check or money, but my recollection is that it was not paid to me either way.

Q. Do you say that you do not remember receiving the check of E. A. McIntire payable to the order of Medford & Waldron?

A. I do not remember any check.

Q. And you do not remember endorsing it?

A. No, sir; but I might have done so.

Q. Did you get a receipt from Luke Madison?

A. No, sir.

Q. Who settled with him?

A. I think to the best of my knowledge he was settled with in Mr. McIntire's office.

Q. Were you present?

A. I cannot say positively whether I was or not, because it was a transaction many years ago and I have no data to show.

105 Q. Do you not know that these receipts were all given in the name of Martha McIntire?

A. No, sir.

Mr. HENKLE: I here give those papers which are attached in evidence.

Mr. MACKEY: To the admission of which solicitors for complainant make the same objection as to the other papers.

(NOTE.—And the same are herewith filed in evidence and marked Exhibit A. H. No. 9.)

Q. Do you know Miss Martha McIntire?

A. I think I would know her if I was to see her.

Q. While you were building those houses did she visit them?

A. Yes, sir; once.

Q. More than once?

A. No, sir.

Q. Did she give any directions or suggestions about the building?

A. No, sir. When the houses were nearly completed and I was to get some money from Mr. McIntire, I think, on the contract, he said that he would like to have the owner of the houses (he did not name the owner of the houses) come and look at them.

Q. Who was that owner?

A. This lady.

Q. Martha McIntire?

A. Yes, sir.

106 Q. He introduced her to you as the owner of the houses?

A. Yes, sir.

Q. You had not then seen the receipts for the party walls in her name?

A. No, sir; I did not see them. I was not dealing with any one except Mr. McIntire. She came down there and looked at the houses and seemed to be very well pleased with them.

Q. Did you ever meet Miss Martha McIntire at Grace church while these buildings were in progress?

A. After she came down there and looked at those houses I then became acquainted with her and knew her when I saw her, and I saw her at Grace church.

Q. And you talked with her about them?

A. No, sir. The only conversation I had with her was just that day down there, and it was very little. All three of us—Mr. McIntire, Martha McIntire, and myself—went through the houses.

Q. She claimed to be the owner of the houses at that time?

A. Not from any conversation. She seemed as if she was the owner.

Q. Did she seem to talk as if she was the owner?

A. I had nothing to lead me to believe that she was the owner.

Q. You say that when you began to build there some colored woman came and objected?

A. Yes, sir.

Q. Did you know who it was?

A. No, sir; only she was pointed out to me as Mrs. Pryor.

107 Q. Who pointed her out?

A. I could not tell.

Q. When?

A. Perhaps she introduced herself.

Q. I want to know your recollection.

A. My recollection is that Mr. Madison pointed her out to me as the owner or who had been the owner of that ground.

Q. What was her name?

A. Pryor.

Q. Your recollection is that Madison pointed her out to you as having been the owner of the ground and that he was the man at the next house?

A. Yes, sir.

Q. She objected to your building?

A. She did not object to me.

Q. What did she say?

A. She said that Mr. McIntire did not own that property. She said that he had gotten it from her or her family by fraud, or something to that effect. She did not state how, but that he got it wrongfully.

Q. Did she make any objection other than that?

A. No, sir. She did say that there would be trouble. I said to her that it was nothing at all to me; that I had a contract to build the houses for Mr. McIntire, and she said there would be trouble; that is about all she said. She seemed to act as not satisfied, but dissatisfied that the parties were going to build on that lot, and seemed to claim that she or some of her family had an interest in it.

108 Q. When was that?

A. That was a few days before we commenced excavating. I do not remember the month, but it was in the fall of 1886, I believe.

Q. Was E. A. McIntire present?

A. No, sir; not at that time.

Q. Was that suit against you in the criminal court about those houses?

A. It was a suit for building without a permit the two rear houses.

Q. Not the front houses?

A. No, sir; we had a permit for the front houses.

Q. Did you build those rear houses without a permit?

A. Yes, sir.

Q. Did you subpœna Mr. E. A. McIntire to testify in your behalf?

A. No—yes, I did; I withdraw that.

Q. Did he appear and testify?

A. Yes, sir.

Q. You are sure of that?

A. I think I can swear positively that he did testify, and he testified that he was not the owner of the houses.

Q. Did he say who the owner was?

A. I think he said Miss Martha McIntire.

Mr. MACKEY: Solicitors for the complainant object to the testi-

mony as to what Mr. McIntire testified in relation to the ownership of the property as hearsay.

Mr. HENKLE: And I object to the whole testimony as irrelevant to the issues in this case.

CHAS. MEDFORD.

* * * * * * *

109 *Joseph Forrest.*

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Direct examination.

By Mr. MACKEY:

Q. You are a practicing member of the bar of the District of Columbia and have your office at No. 1003 F street northwest, in this city?

A. Yes, sir.

Q. Are you the same Joseph Forrest who, in December, 1882, by deed recorded in Liber 1029, folio 44, of the land records of this District, purchased from one Emma Taylor part of lot 4, in square 154, in this city?

A. Yes, sir.

Q. In making that purchase with whom were your negotiations?

A. With Edwin A. McIntire.

Q. Did you ever have any negotiations with Emma Taylor?

A. No, sir.

Q. Did you ever have any conversation with her at all?

A. I had no conversation with her.

Q. Who did Mr. McIntire tell you Emma Taylor was?

A. He said that she was a lady residing in Philadelphia.

Q. Did you get your deed immediately?

A. Well, the contract was made in the early part of December, and I did not get the deed until early in January.

Q. Did you have occasion to ask for your deed?

A. Yes, sir; and my recollection is that he said he had sent it out of town—to Philadelphia—to have it executed by Emma

110 Taylor, and I eventually got it.

Q. Do you remember ever seeing her to your knowledge?

A. I testified in a former case that I had not seen her; but somehow I have the impression that upon one occasion either Mr. McIntire or his clerk pointed out some party in his office as Emma Taylor, but I had no conversation with her at all.

Q. Was that woman in the office at the time?

A. Yes, sir; and about going out.

Q. Was she pointed out to you as she was going out or while sitting down?

A. She was standing up and about going out.

Q. Did you speak to her?

A. Well, I may have been introduced to her formerly; I am not sure about that; at all events, I had no conversation with her, and I rather think I was not introduced to her.

Q. Do you remember what sort of looking woman she was?
A. No; I think she was of medium size.
Q. Do you know how old she appeared?
A. No, sir.
Q. Except from the fact that either Mr. McIntire or his clerk pointed that person out to you as Emma Taylor, have you any other knowledge that she was Emma Taylor?
A. No, sir.
Q. Do you know the name of the clerk?
A. His name is signed to the agreement I got at that time with the party occupying the house.

Mr. McINTIRE: Was it Zeverly?
111 WITNESS: No; Holl something.
Mr. McINTIRE: Harlston?
WITNESS: Yes; I think that is it.
Mr. McINTIRE: Floyd Harlston.

Q. Did you know him?
A. No, sir; I did not know him, but I recognized the name when Mr. McIntire mentioned it.
Q. To whom did you pay the money?
A. By check to Mr. E. A. McIntire as agent.
Q. Have you those checks?
A. Yes, sir; here they are. The check for the deposit of $25 was made simply to E. A. McIntire, and the check for the balance, $926, of the purchase-money was *am*de to E. A. McIntire as agent.

Mr. MACKEY: I here give those checks in evidence.
(NOTE.—And the same are herewith filed in evidence and marked respectively Exhibits A. H. Nos. 10 and 11.)

Q. Why did you draw this first check (Exhibit A. H. No. 10) to the order of E. A. McIntire when you purchased from Emma Taylor? Was it at his request or upon your own suggestion?
A. I could not say. Probably my own suggestion.
Q. Do you remember whether this second check (Exhibit A. H. No. 11) was made payable to the order of E. A. McIntire as agent at his or your suggestion?
A. I could not say.
112 & 113 Q. In whose writing are those checks?
A. In mine.

Mr. MACKEY: Solicitors for complainant notify the solicitor for the defendants E. A. McIntire and Martha McIntire that they will ask leave to read in evidence in this case the deed marked for identification "A. L. G. No. 7" and filed as Exhibit A. H. No. 14 to the testimony for the complainant in the equity cause No. 10745, of William E. McIntire *vs.* Edwin A. McIntire *et al.*, in the supreme court of the District of Columbia.

Cross-examination.

By Mr. HENKLE:

Q. Do you know that Emma Taylor came to town?

A. No, sir; except that upon the occasion I speak of as having the impression that I saw Emma Taylor, or a person was pointed out to me as Emma Taylor in Mr. McIntire's office.

Q. Did he tell you that she had come to town?

A. I do not remember that. He probably did, because the deed was executed here, as it appears, and I can explain that in no other way.

Q. Was it about the time that this deed was executed?

A. Yes, sir; I had some negotiation with Mr. McIntire about some property on I street and it may have been about that time. I do not know whether it was prior or subsequent to the time that I bought this property.

JOSEPH FORREST.

* * * * * * *

114

MARCH 17, 1891.

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Alfred Brown.

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Direct examination.

By Mr. MACKEY:

Q. You reside in the city of Washington?

A. Yes, sir; No. 918 E street southwest.

Q. Do you know Edwin A. McIntire?

A. Yes, sir.

Q. You know, of course, the house you live in?

A. Yes, sir.

Q. From whom did you buy that house?

A. I bought it from Emma Taylor, through Edwin A. McIntire.

Q. Did you ever see Emma Taylor?

A. Not to my knowledge.

Q. Where were you sitting about five minutes ago, just before we commenced to take your testimony?

A. Out in the other room.

Q. Where was this gentleman (pointing to Mr. Henkle) and myself?

115 A. In this room.

Q. Did Mr. McIntire come up and speak to you out there?

A. Yes, sir; he spoke to me.

Q. I want you to tell just what occurred. You are on your oath now. Did he ask you out in the hall?

A. Yes, sir.

Q. Did he have any conversation with you out in the hall?

A. Yes, sir; he asked me questions.

Q. What questions did he ask you?
A. He asked me if I ever saw Emma Taylor.
Q. What did you tell him?
A. I told him not to my knowledge.
Q What did he say to you?
A. He said he had her down in the buggy once; if he did, I am not sensible of it.
Q. Do you remember my coming up while he had you conversing with you in the hall?
A. Yes, sir.
Q. Do you remember what I stated to him?
A. Yes, sir.
Q. What did I state to him?
A. You said you did not want him to be talking to your witnesses.

* * * * * * *

116 Q. Who gave you this deed?
A. Edwin A. McIntire.

Mr. HENKLE: Does it relate to this property?
Mr. MACKEY: No. I offer it in evidence for the purpose of identifying the handwriting of Emma Taylor.
Mr. HENKLE: This deed is objected to upon the ground that it is irrelevant and immaterial and because it is not competent to introduce a paper that is not in the case and germane to it for the purpose of instituting a comparison of handwriting.

(NOTE.—And the said deed is herewith filed in evidence and marked Exhibit A. H. No. 12.)

Q. I see it is stated in this deed (Exhibit A. H. No. 12) that you paid for this property $200. Was that what you paid for the property?
A. That is what I paid to commence it.
Q. Well, how much did you pay?
A. I paid notes amounting to about $900.
Q. Did you get a release of that?
WITNESS: The abstract of title?
Mr. MACKEY: No; a release of the trust.
A. Yes, sir.

Mr. MACKEY: I here offer in evidence this paper, which reads as follows:

"WASHINGTON, D. C., *May* 14, 1883.

117 Received this 14th day of May, A. D. 1883, of Alfred Brown the sum of two hundred dollars as the first payment on sale of house No. 916 E street southwest, being the northeast ¼, part of lot 3, in square 388, as per agreement of this day.
Rec'd also the additional sum of twenty dollars to pay costs of transfer, &c., &c.
Total, $220.

E. A. McINTIRE, *Agent.*"

Mr. HENKLE: To the admission of which I object, because incompetent, irrelevant, and immaterial.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 13.)

Mr. MACKEY: I here offer in evidence the record of two deeds of trust, one from Joseph E. Hayne and wife to Edwin A. McIntire, trustee, dated May 14, 1879, and recorded in Liber 914, folio 494, and one from Alfred Brown to Edwin A. McIntire, trustee, dated May 14, 1883, and recorded in Liber 1043, folio 6, and also the record of a release of those deeds of trust by Edwin A. McIntire, trustee, to Alfred Brown, dated June 11, 1886, and recorded in Liber 1182, folio 377 *et seq.*, all of the land records of the District of Columbia.

Mr. HENKLE: I object to the records offered for the reason that they are incompetent, immaterial, and irrelevant.

Cross-examination.

By Mr. HENKLE:

Q. Mr. Brown, when did you get this deed (Exhibit A. H.
118 No. 12) for the property?

A. I do not just remember the date.

Q. Was it at the time the deed bears date?

A. Yes, sir.

Q. It bears date the 14th of May, 1883. That is the time you got it?

A. Yes, sir.

Q. Where did you get it?

A. From Mr. McIntire, at his office, No. 918 F street.

Q. You were not present when it was signed?

A. No, sir.

Q. You were not present before the justice of the peace when it was acknowledged?

A. I was before the justice of the peace once or twice, but I don't just remember.

Q. About this deed?

A. No, sir; when we commenced to effect the arrangement.

Q. Were you there when this deed was made?

A. After I paid him up all the money we went before a justice of the peace.

Q. You do not remember being before the justice of the peace when you got this deed?

A. No, sir.

Q. Now, Mr. Brown, do you remember seeing Miss Taylor, whoever she was?

A. To my knowledge, I don't remember ever seeing Miss Taylor.

Q. Do you not remember Mr. McIntire coming in a buggy to your house to see you and she was with him?

119 A. I remember Mr. McIntire coming to my house in a buggy.

Q. With a lady?

A. Yes, sir; he was with a lady in the buggy two or three times, but I never was sensible of that being Miss Taylor, though.

Q. Do you remember that you wanted further time to pay for the property?

A. No, sir; I remember I wanted further time to pay the loan I got on it after I had paid for it.

Q. Do you not remember wanting Mr. McIntire to get you further time, and that some of your family were sick at the time after you got the deed and while you were paying for the property?

A. Yes, sir; but I came to Mr. McIntire and made that request and got the extension and paid for the extension.

Q. Do you remember Mr. McIntire bringing a lady down there in a buggy and introducing her to you as Miss Taylor and talking about giving you an extension?

Mr. MACKEY: I object to this testimony. Mr. McIntire cannot make testimony for himself in this way.

A. I am not sensible of it.

ALFRED BROWN.

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120 *Thomas A. Darneille.*

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Direct examination.

By Mr. MACKEY:

Q. What is your present occupation?

A. That of an examiner of the tax books of the District of Columbia.

Q. Have you made any recent examination for the purpose of finding out who paid the taxes on parts of lots 21 and 22, in square 569, and part of lot 21, in square 77, standing in the name of Martha McIntire, and as to taxes on sublot 156 and part of sublot 157, in square 615; sublot 21, in square 992, and sublot 36, in square 1102, standing in the name of Emma Taylor?

A. Yes, sir.

Q. Will you state the result of that examination?

A. I searched for the purpose of finding out any payments being made, and by whom, on said property, and found thus:

Original lots 21 and 22, square 569, in the name of Martha McIntire, for the first half of the year 1891, amounting to $30.67, paid November 29, 1890, by check of E. A. McIntire, in day book 46, folio 138; also for the first half of the year 1890, amounting to $30.67, paid on the same property November 25, 1889, in day book 42, folio 106, by check of E. A. McIntire; also for the second half of the year 1890, on the same property, paid in cash May 28,

121 1890, day book 43, folio 321, but by whom the payment was made is not mentioned. If it is paid in cash it is never mentioned on the day book; only if paid by check or draft, then it is noted. On part of lot 21, square 77, I find the first half of the year

1891 paid by the check of E. A. McIntire, amounting to $17.94, day book 46, folio 138; and the second half of the year 1890 was paid in cash, amounting to $17.94, day book 43, folio 321, without stating who by.

As to the Emma Taylor property: On sublot 156 and part of sublot 157, in square 615; sublot 21, in square 992, and sublot 36, in square 1002, standing in the name of Emma Taylor, the tax for the first half of the year 1891 was paid November 29, 1890, by check of E. A. McIntire, amounting to $13.58, on all of the Taylor property, day book 46, folio 138. The first half of the year 1890 was paid on all that property November 25, 1889, day book 42, folio 106, amounting to $13.58, and the second half paid May 28, 1890, day book 43, folio 321, amounting to $13.57, in cash, but by whom does not appear. Of the special taxes for improvement of streets, sewers, pavements, or anything of that sort, I find that there is a special tax against parts of lots 21 and 22, square 569, for $11.65 due, with no interest, only a short while. On original lot 5, in square 1002, the assessment for sewer was paid in cash, the amount being $19.89, on the 17th of September, 1890, with no penalty. It does not state by whom it was paid.

Q. Have you anything there showing by whom any of those special taxes were paid?

A. No, sir. There had been taxes on these lots fifteen or twenty years ago, all paid up.

122 Mr. HENKLE: Cross-examination waived.

THOMAS A. DARNEILLE.

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George W. F. Swartzell.

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Direct examination.

By Mr. MACKEY:

Q. Mr. Swartzell, what is your age?

A. I am thirty-four years of age.

Q. What is your business?

A. Real-estate broker.

Q. One of the firm of——

A. (Interposing)—of B. H. Warner & Co.

Q. The land records of the District of Columbia show that on the 28th day of December, 1876, a conveyance was made to you by E. A. McIntire, trustee, of part of lot 21, in square 77, for the consideration of eleven hundred and odd dollars, the deed being recorded in Liber 844, folio 14. Do you know anything of that conveyance to you?

A. I am not able to locate the property by lot and square, but a conveyance was made to me of a piece of property on the south side of I street west of 21st street.

123 Mr. HENKLE: Question and answer objected to because the conveyance that is inquired about has no relation to the property in controversy and therefore irrelevant, immaterial, and incompetent.

Q. You may state whether you paid the consideration mentioned in the deed for that property.

A. I did not pay anything.

Mr. HENKLE: Same objection, which it is understood is made without repetition to all of this testimony.

Mr. MACKEY: Let it be so understood.

Q. How did the deed come to be made to you, if you remember?

A. If I remember correctly, the property was bid off to me at an auction sale.

Q. Under a deed of trust?

A. I do not know anything about the sale.

Q. How old were you then?

A. I was in my 20th year.

Q. Subsequent to that there appears of record in Liber 992, folio 273, of the land records of the District of Columbia, a deed dated January 12th, 1882, by which you purport to convey the property mentioned to one Emma Taylor. You may state whether you ever received anything for that conveyance.

A. There was nothing ever paid me.

Q. Did you ever claim any interest in the property?

A. None at all.

Q. You may state whether you ever saw the grantee,
124 Emma Taylor, named in that deed.

A. Never to my knowledge. I do not recall that I ever saw her.

Q. I will ask you how you came to execute that deed; I mean the deed of 1882 by you to Emma Taylor.

A. I presume at the request of Mr. McIntire.

Q. He brought you the deed and asked you to sign it, which you did?

A. Yes, sir.

Q. Do you remember ever seeing Emma Taylor before or since that time?

A. I have no recollection of ever seeing her.

Q. Have you ever claimed at any time any interest in that property?

A. None.

Q. At whose request, if any, were the two deeds I have mentioned executed, the one to you and the other from you?

A. At the request of Mr. McIntire.

Mr. HENKLE: I waive cross-examination.

(NOTE.—Recalled at page 139 for cross-examination.)

GEO. W. F. SWARTZELL.

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125 *Annie L. Galliher.*

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Direct examination.

By Mr. MACKEY:

Q. Mrs. Galliher, where do you live?
A. No. 469 H street southwest, in this city.
Q. Do you know Edwin A. McIntire?
A. Yes, sir.
Q. Do you know Martha McIntire?
A. Yes, sir.
Q. Do you know Emma T. McIntire?
A. Yes, sir.
Q. You may state your relationship to them.
A. I am their niece.
Q. What does "T." stand for in Emma T. McIntire's name?
A. I always understood that it stands for Taylor.
Q. Emma Taylor McIntire?
A. Yes, sir.
Q. Who have you heard call her Emma Taylor McIntire?
A. Well, we always in my father's family called her Emma Taylor, to distinguish her from my sister, Emma V. McIntire.
Q. Your father was a brother of Emma T. McIntire, was he not?
A. Yes, sir.
Q. Have you your father's family Bible here?
A. Yes, sir.
Q. This is the family Bible which I hold in my hand?
126 A. Yes, sir.
Q. This, you say, was your father's?
A. That was my father's book.
Q. By whom were the entries made or in whose handwriting are the entries made in the family record in this Bible?
A. My father's writing.
Q. Your father being, as I understand, a brother of Emma T. McIntire?
A. Yes, sir.
Q. Now, I will read from the family record here under the head of births: "Edwin Taylor McIntire, son of Samuel and Elizabeth McIntire, was born March 5, 1811, at Philadelphia, Pennsylvania." Who was that Edwin Taylor McIntire?

Mr. HENKLE: I object to the reading from this Bible upon the ground that it is not a record made by any of the parties to this suit and is immaterial, irrelevant, and incompetent as evidence.

A. He was my grandfather.
Q. The father of whom?
A. The father of Emma T. McIntire.
Q. Is your father living now?
A. No, sir; he is dead.

Q. And Edwin Taylor McIntire is dead also?
A. Yes, sir.
Q. How long has this family Bible been in your family, do you remember?
A. It seems to me that I can remember it for twenty years.
127 Q. You can remember it being in the family for twenty years?
A. Yes, sir.
Q. Besides your father (I think you have said that your father called Emma T. McIntire Emma Taylor) who else ever called her Emma Taylor?
A. Only the members of my father's family used to speak of her as Emma Taylor.
Q. The members of your father's family in addition to himself?
A. Yes, sir.
Q. What was Martha McIntire's business in early life—that is, how did she earn a living?
A. She told me that she used to sew books.
Q. Do you know whether or not she was a woman of any means in 1883 and 1884?
A. She may have had a little money. I do not think she was wealthy.
Q. Had she inherited anything?
A. Not to my knowledge.
Q. With whom did she live in 1883 or 1884 and thereabouts?
A. With her mother.
Q. What was her mother's name?
A. Sarah McIntire.
Q. Was she at work then?
A. No, sir.
Q. Do you know how long it has been since she has been doing any work for herself?
A. I do not remember when she went at this trade of
128 sewing books. Since I can remember she has always lived at home.
Q. Doing anything for a living?
A. Only the house-work.
Q. Had she any income that you ever heard or knew of?
A. She told me once that she had a small amount of money saved, but not enough to keep her.
Q. Do you remember how long ago that was?
A. That was in the summer of 1878.
Q. From what you know of Martha's circumstances would you say that in 1883 she was able to pay $2,500 cash for a piece of property, and soon thereafter $3,200 in cash for erecting buildings on it, amounting to $5,700—that is, from what you know of her ability to spend that much in 1883 and 1884 and along there?
A. I do not believe she had that much money.
Q. And if she had would you have been likely to have known anything about it?

A. No, sir; I do not think I would have known anything about it if she had it.

Q. Do you know Emma T. McIntire's handwriting?

A. I think I do.

Q. I now refer you to your testimony given in equity cause No. 10745, of William E. McIntire *vs.* Edwin A. McIntire *et al.*, and call your attention to Exhibit A. H. No. 3, and ask you what you know of that paper and where it came from.

A. It came out of the autograph album.

Q. Who was it written by?

A. By Emma T. McIntire.

129 Mr. HENKLE: I object to this testimony because it relates to a paper which is not a paper in this case, and it is incompetent to introduce a foreign paper for the purpose of instituting a comparison of handwriting.

Q. I call your attention to Exhibits Nos. 5, 6, 7, 8, 9, 10, and 11, filed with your testimony in that case, and ask you to state in whose handwriting those cards are.

Mr. HENKLE: Same objection.

A. They look, I think, like Emma T. McIntire's handwriting.

Q. Now, I call your attention to Exhibit A. H. No. 14, filed in that same cause, purporting to be a deed from Emma Taylor to Joseph Forrest, and ask you in whose handwriting the words "Emma Taylor" there appear to be.

Mr. HENKLE: Same objection.

A. It looks like the same handwriting.

Q. You mean the same handwriting you have been looking at?

A. Yes, sir.

Q. Emma T. McIntire's handwriting?

A. Yes, sir.

Mr. HENKLE: Answer of the witness objected to because predicated on the comparison of handwriting of papers not in the case.

Cross-examination.

By Mr. HENKLE:

Q. Did you ever see your aunt Emma T. McIntire write?

A. Yes, sir.

130 Q. How often?

A. I suppose three or four times that I can remember.

Q. Under what circumstances?

A. I saw her write in my album; that I remember positively.

Q. And that is the scrap which you have furnished in the other case?

A. Yes, sir.

Q. Well, what else did you ever see her write?

A. I cannot remember positively anything else that I have seen her write. I received letters from her.

Q. You would not swear that you ever saw her write anything else, would you?

A. I would not say positively. I know I have seen her write at her home, but that is the only thing I can remember positively.

Q. Have you ever seen her write in such way as to take notice of the particular style of her chirography so as to enable you to identify it from having seen her write?

A. I never saw her write so that I could do that. I have not studied her writing.

Q. You have not found any such example of her form of writing from having seen her write as to enable you to testify to it?

A. You will have to ask that question over.

Q. You have not in your mind any such idea of her style of writing as to enable you to identify it from having seen her write?

A. I have never seen her write enough for that. I have
131 seen her writing her name that she had sent to me.

Q. You have seen her writing frequently that she recognized as hers?

A. Yes, sir.

Q. Have you seen anything more than her signature?

A. Yes, sir; I have received letters from her.

Q. How many letters have you received from her?

A. Not very many. I could not say now, for it has been so long ago.

Q. Could you from those letters that you have received from her testify to her handwriting?

A. I have a knowledge of her handwriting from those letters.

Q. And you think you are competent to testify to it?

A. I think I can testify to her writing.

Q. Those specimens of her handwriting introduced in that other case were produced by you, were they not?

A. I only produced one of them.

Q. Which did you produce?

A. The writing from the album.

Q. That case was a suit by your brother against your uncle Edwin A. McIntire, was it not?

A. Yes, sir.

Q. Did you have anything to do with instigating that suit?

A. No, sir.

Q. You did not have anything to do with it?

A. No, sir; I did not know it was done until it was brought.

Mr. MACKEY: I object to any testimony relating to the history of that suit, as it involves none of the property embraced in this cause.

132 Q. You had nothing to do with instigating that suit?

A. No, sir.

Q. What are your relations to your aunt and your uncle Edwin A. McIntire—that is, are they friendly?

A. Not very.

Q. Are they not, on the contrary, quite hostile?

A. Rather.

Q. Are they not bitter on your part?

A. Well, they are not extremely pleasant.

Q. Are they not extremely bitter?

A. I do not know why I should feel very much friendship or affection for them.

Q. Are they not extremely bitter?

A. I cannot say that they are extremely bitter, but they are not very friendly.

Q. Had you not been actively assisting your granduncle Charles McIntire, in his lifetime, to carry on a suit against Edwin A. McIntire and the members of his family, involving the validity of the will of David McIntire?

A. I gave my testimony as far as I could truthfully in his favor.

Q. In whose favor?

A. In favor of my uncle Charles McIntire.

Q. Were you not very active in that case in aiding him?

A. I do not know that I gave him any aid except the testimony I gave in court.

Q. Did you not frequently confer with his counsel and assist in the preparation of that case?

133 A. No, sir.

Q. Did you not frequently confer with Mr. Johnson for the purpose of aiding him in prosecuting that case?

A. No, sir; I do not know that I had enough knowledge for that.

Q. Well, confer with him and give him information in regard to the proof in the case.

A. Well, I do not remember having given Mr. Johnson any testimony that I did not think was all the truth.

Q. I am not talking about that. I am trying to get at your animus. Did you not give Mr. Johnson all the aid you could in preparing that case and in the trial of it?

A. I suppose I did, generally.

Q. Well, as a matter of fact, did you or not do your level best?

A. I guess I did.

Q. Your feeling has not improved any since, has it; you do not feel kindlier now than you did?

A. No; I have not had any cause to.

Q. How did you happen to become a witness in this case?

A. Mr. Mackey asked me to come here.

Q. Where did you see him?

A. He called at my house with a letter of introduction.

Q. From whom?

A. From Mr. Johnson.

Q. William G. Johnson?

A. Yes, sir.

Mr. MACKEY: Have you that letter?

134 WITNESS: No.

Mr. MACKEY: I will produce it if you wish it.

Mr. HENKLE: She remembers the letter.

Q. What did the letter state, Mrs. Galliher?

A. Permit me to introduce Mr. Mackey, a member of our bar, who is engaged in—I do not remember the exact words—in the laudable effort of helping those who have been defrauded as your brother was by Mr. E. A. McIntire and his fictitious ally, Emma Taylor. Any information or assistance you can give him will be in the interest of justice and against wrong-doing. That is all I can remember.

Mr. MACKEY: I will have the witness produce the letter.

Q. You have been asked about the financial resources of your aunt, Martha McIntire. What did you know about them?

A. I do not know that I knew positively anything.

Q. Well, then, you cannot testify to anything you do not know anything about.

A. Except what she told me.

Q. Did she tell you how much money she had?

A. No, sir.

Q. Is she not rather a reticent woman about her private affairs?

A. Yes, sir; the family is reticent.

Q. Well, is she not so?

A. Yes.

Q. She would not be likely to tell anybody that, would she?

A. She might, her own immediate family.

135 Q. She would not be likely to tell you, would she?

A. No, sir.

Q. Just what was it you heard her say?

A. That she had some money saved, but not enough to keep her.

Q. Was that sufficient to enable you to testify as to how much she had or how much she had not?

Mr. MACKEY: Objected to because the witness has not undertaken to state how much Martha McIntire had.

A. I had by what she told me.

Q. Did you fix in your own mind an amount that she had, from what she told you, so you could swear to it?

A. Yes; I suppose a rough amount, because I knew what work she had been engaged upon, and I knew that she could not out of that work have saved a very large amount.

Q. How much older is your aunt than you?

A. There may be thirty years difference in our ages.

Q. You say, as I understand you, that since you can remember she has not been engaged in work?

A. No, sir; she has lived at home.

Q. How do you know about what she did before you can remember?

A. She told me that she used to sew books.

Q. Do you know how long she was engaged in it?

A. No, sir; I do not.

Q. Do you know what compensation she got?

A. I do not know, but I always understood that pay——

Q. (Interrupting.) Now, you are guessing.

136 A. (Interposing.) I guess I do not know what the compensation is, but I can imagine.

Q. You have no positive knowledge about it?

A. No, sir.

Q. It was a mere guess, and you do not know anything about it. Is not that the fact—I mean as to the compensation she received?

A. Yes, sir.

Q. You do not know how long she was engaged in work, do you—how many years?

A. No, sir.

Q. You have no idea as to that?

A. Well, I might guess at it.

Q. When she lived in Philadelphia your family had removed to Washington?

A. Yes, sir.

Q. Do you not know that she used to send to your father, when he was living, money to invest for her in Government bonds?

A. I know that some of them sent money, but I do not know who sent it.

A. Well, did you not understand that your aunt Martha sent money to your father to invest for her in bonds?

A. No, sir.

Q. You knew that some of the family did?

A. I knew that somebody used to send money.

Q. Well, do you know that your father and your uncle Edwin A. McIntire had an account in the German-American bank,

137 where they kept an account for Martha McIntire?

A. I knew that my father had an account there, but I did not know that he kept it there for anybody else.

Q. Do you not know that he kept an account there for her of investments made for her?

A. No, sir.

Q. Do you remember your father assigning that account to your uncle shortly before he died?

A. No, sir.

Q. And his going to Philadelphia about it?

A. No, sir.

Mr. MACKEY: Which one?

Mr. HENKLE: Edwin A. McIntire.

Redirect.

By Mr. MACKEY:

Q. Martha McIntire, you say, stated to you that she had been employed in stitching books?

A. Yes, sir.

Q. And whatever she earned was from that employment?

A. That is the only thing I ever knew her to be employed at.

Mr. HENKLE: You do not know whether she was employed in other things or not?

WITNESS: I do not know.

(NOTE.—It is agreed and stipulated here by counsel that the grandfather referred to by this witness is named Edwin Taylor McIntire.)

138 Recross.

By Mr. HENKLE:

Q. I omitted to ask you when you testified in that suit of your brother's. Do you remember what year it was?

A. No, sir; I do not.

Q. Do you remember that it was in the early part of 1888?

A. I have nothing by which to fix it. It was two or three years ago.

Q. Well, do you know whether anything has been done with that suit?

A. I do not know. I never inquired anything about it lately.

ANNIE L. GALLIHER.

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Mr. MCINTIRE: I here produce the deed called for by the counsel for the complainant, to wit, the deed from Emma Taylor to Martha McIntire, dated May 31, 1884, and recorded in Liber 1210, folio 182.

Mr. MACKEY: I here give said deed in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 14.)

(Adjourned to March 19, 1891, Thursday, 4 o'clock p. m.)

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139 GEORGE W. F. SWARTZELL, who further deposes and says, being recalled for cross-examination:

By Mr. HENKLE:

Q. Will you be kind enough to state the circumstances connected with the making of the deed of that property which you testified the other day was knocked down to you at an auction sale—how it came to be done, by whom it was done, and what you did with the property afterwards?

A. The property was knocked down to me by Mr. Coldwell, who was, I believe, the auctioneer. I was not present at the sale.

(NOTE.—For identification the property referred to is understood as the Southey property.)

Q. When did you first learn that the property had been knocked down to you by Mr. Coldwell?

A. On the day following, I believe.

Q. Who told you?

A. Either Mr. McIntire or Mr. Coldwell; I have forgotten which.

Q. Were you and Mr. Coldwell and Mr. McIntire all in
140 the same office at that time?

A. We were.

Q. What did you do after learning that the property had been knocked down to you?

A. Immediately I did nothing, but a short time after I conveyed the property to Martha McIntire.

Q. Was it conveyed to you first?

A. It was conveyed to me first.

Q. By whom?

A. By E. A. McIntire as trustee, and I immediately conveyed the property——

Q. (Interposing)—to Martha McIntire?

A. To Martha McIntire, I think. The records will show.

Q. I understand that deed was never recorded and was afterwards cancelled.

A. I cancelled the deed reconveying that property, I believe. What I wish to say is this: that my interest in the property was so little that I paid but little attention to the property itself. It was not mine and I conveyed it to the person who was entitled to it.

Q. Martha McIntire was the holder of the note?

A. I do not know about that. I was not acquainted with the details of the transaction. It was an auction sale and I did not take the pains to acquaint myself fully with the details of the transaction.

Q. You made a deed to Martha McIntire?

A. I believe I did.

Q. Do you recall that subsequently you made a deed of
141 the same property to Emma Taylor?

A. I do not remember to whom I made the deed, but I remember that as to a certain piece of property I cancelled a deed that had not been recorded and executed another deed.

Q. You cannot recollect whether this was the transaction or not?

A. I cannot recall, but I think it was.

Q. What was your understanding as to who was the owner of the notes secured by the deed of trust under which the property was sold?

A. I do not recollect that I had any understanding with regard to the ownership.

Q. Do you recall it in this way: Do you recall that you made the deed to Martha McIntire because she was the holder of the note?

A. I do not recall that. As I said awhile ago, I had practically no interest in the transaction and did not charge my memory with even the details of it, except to know that I conveyed the property from myself once.

Q. Did you make that conveyance to Martha McIntire immediately upon your getting your deed from the trustee?

A. If that was the first deed, I made it very soon after.

Redirect.

By Mr. MACKEY:

Q. Do you remember what reasons were given by Mr. McIntire why he wanted to convey the property to you?

A. I do not remember.

Q. Did Martha McIntire ever give you anything for the
142 conveyance—that is, did she ever make any payment?

A. No, sir.

GEO. W. F. SWARTZELL.

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Arthur McDermott.

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Direct examination.

By Mr. MACKEY:

Q. What is your occupation?

A. Deputy marshal and baliff of the supreme court of the District of Columbia.

Q. Do you remember serving some writs upon Edwin A. McIntire some time in February last?

A. I do.

Q. In what cases did you serve those writs?

A. I cannot remember the numbers of the cases. It is on my book over at the court.

Q. Well, you have a memorandum there; take it and refresh your memory and say in what cases those writs were served.

A. Nos. 12977, 12978, and 12979, in equity.

Q. You served the writs of subpœna upon Edwin A. McIntire in those three equity causes?

A. Yes, sir; upon Edwin A. McIntire, on the 7th of Febru-
143 ary, 1891, in person.

Q. The writs were against whom?

A. I had three against Emma Taylor.

Q. When you served the writs upon Edwin A. McIntire did you have any conversation with him?

A. I asked him where she was.

Q. Asked where who was?

A. Emma Taylor. He said, "She is not here; I think she is in Chicago. She is married, but I do not know the name of the party she married."

Q. He did not know her married name, but thought she was in Chicago?

A. He said she was married and he thought she was in Chicago; that is the expression exactly.

Q. Did you ask him who she had married?

A. I do not remember asking who she had married.

Mr. HENKLE: Cross-examination waived.

ARTHUR McDERMOTT.

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Floyd Harleston.

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Direct examination.

By Mr. MACKEY:

Q. You reside in Washington city?

144 A. Yes, sir.

Q. What is your occupation?

A. Collector.

Q. Do you know Edwin A. McIntire?

A. Yes, sir.

Q. Were you ever in his employ; if so, when?

A. Yes, sir; I was there from the fall of 1879 to the fall of 1884.

Q. What were your duties in his office?

A. Well, my duties were principally connected with the rent department.

Q. Were you in his office a great deal or outside?

A. I was in and out.

Q. And you were there from morning until evening?

A. Yes, sir.

Q. During the time that you were there did you ever see his sisters there?

A. Yes, sir.

Q. Do you know his sisters—I mean the sisters of Edwin A. McIntire—Emma T. McIntire and Martha McIntire?

A. Yes, sir.

Q. Did they come there frequently or not?

A. Well, no; I do not know that they came there frequently.

Q. I mean once or twice a week?

A. Yes; fully as often as that, when they were in the city.

Q. Towards the latter part of your employment there, say in 1882 or 1883, how was it?

A. As I recollect, they came to the city about that time; I

145 do not know what year, but when I first went there they were not residing in Washington.

Q. But after they came here, you say they were there about how often, on an average?

A. I cannot say positively. I judge once a week.

Q. Who would be there oftener, Emma T. McIntire or Martha McIntire?

A. I do not recollect any difference.

Q. While you were in that office did your ever meet with a woman by the name of Emma Taylor?

A. I do not recollect doing so.

Q. You do not recollect meeting any such person as Emma Taylor?

A. No, sir.

Q. Did you ever collect any rents for Emma Taylor?

A. Well, it has been so long ago that I have really forgotten.

Cross-examination.

By Mr. HENKLE:

Q. How old were you at that time?

WITNESS: At what time?

Mr. HENKLE: At the time you were in Mr. McIntire's office.

A. I was eighteen years of age when I went there.

Q. And your business, you say, was connected with the rent department?

A. Principally.

Q. Did you know personally everybody who did business
146 in that office?

A. No, sir.

Q. Did you know half of the people that owned property rented through that office?

A. I could not say. I knew a number of persons who had business with the office.

Q. Who did the business connected with the sales of property?

A. Mr. McIntire generally attended to that branch himself—that is, he generally dealt with the owners direct.

Q. You do not remember, you say, ever meeting Miss Emma Taylor?

A. I do not recollect ever doing so; however, I might have.

Q. Do you remember ever witnessing an instrument that she signed—that is, witnessing her signature to an instrument?

A. I do not remember.

Mr. MACKEY: I object to that unless the instrument is produced. I say for myself that there is no instrument of record, that I have been able to find, where Mr. Harleston ever witnessed the signature of Emma Taylor, and I have searched the records carefully for that.

Mr. HENKLE: I object to Mr. Mackey making any testimony unless he is sworn as a witness.

Q. Have you seen a deed purporting to be signed by Emma Taylor, which you witnessed?

A. Yes, sir.

Q. How long ago?

A. I think it was last Saturday.

Q. Did you recognize your signature?

147 A. Yes, sir.

Q. It was your genuine signature?

A. Yes, sir.

Q. Well, do you know whether you saw Miss Taylor sign it?

A. I must have, as I signed it as a witness, though I do not recollect the circumstance.

Q. You would not have signed as a witness unless you had seen her write her name?

A. No, sir.

Q. You have no doubt that you did see her write her name?

A. Not at all, as I signed as a witness.

Q. It was not Emma T. McIntire who signed the paper that you witnessed?

A. I have already stated that I do not recollect the circumstance and have no recollection of the appearance of the person who signed it.

Q. It could not have been Emma T. McIntire?

A. I think not.

Q. You knew her?

A. Yes, sir.

—. You would not have mistaken her for anybody else?

A. No, sir.

Q. Did you know Justice Helmick?

A. Yes, sir.

Q. Do you know whether he knew Emma T. McIntire well?

A. I think he was well acquainted with her.

148 Redirect.

By Mr. MACKEY:

Q. Where was this deed shown you last Saturday?

A. I saw it at Mr. McIntire's house.

Q. Have you seen Mr. McIntire since you saw me?

A. Yes, sir.

Q. Did he call on you or you on him?

A. I called on him.

Q. What did you call on him for?

A. Well, I called to tell him that I had a visit from Mr. Mackey, a lawyer, concerning the case.

Q. Well, what else?

A. That was principally the object of my calling.

Q. Well, did you tell him what Mr. Mackey had asked you?

A. Yes, sir.

Q. Well, what was that?

A. That Mr. Mackey asked me whether I remembered about seeing Emma Taylor in his office.

Q. Who did you see when you called at Mr. McIntire's house?

A. I called at his office.

Q. What did Mr. McIntire say to you?

A. I cannot recollect all he said.

Q. Tell me all that you recollect.

WITNESS: In what regard?

Mr. MACKEY: About Emma Taylor.

A. He asked me whether I recollected Emma Taylor, and he said that he had a deed signed by me as a witness, and that I
149 must have seen her. I told him that I might have seen her, though I did not recollect the circumstance.

Q. Well, did he show you the deed?

A. Yes, sir.

Q. What deed was it?

A. I do not remember the property mentioned in the deed.

Q. Who was the conveyance by? Was it a conveyance by Emma Taylor?

A. I think it was a conveyance by Emma Taylor and Barbara Brown.

Q. To whom?

A. That I do not recollect; I did not notice. In fact, I did not pay much attention to it—any more than look at the signature.

Q. Do you know whether that deed was recorded or not?

A. I do not.

Mr. MACKEY: Solicitors for the complainant here call upon the solicitor for the defendant Edwin A. McIntire to have his client produce the deed mentioned as having been shown the witness. Have you it, General?

Mr. HENKLE: No; I have not seen it.

Q. Were there any other witnesses to that deed besides yourself?

A. I think there was another.

Q. Who was the other?

A. Two, I think; Justice Helmick and, I think, Mr. Peugh.

Mr. HENKLE: Samuel A. Peugh?

150 WITNESS: Yes, sir.

Q. Do you know Emma T. McIntire's handwriting when you see it?

A. I do not think I could recognize it out of a batch of handwriting. I do not think I could pick it out.

Q. You saw the signature to the deed, you say, on Saturday?

A. Yes, sir.

Q. Look at that signature——

Mr. HENKLE (interposing): What is that?

Mr. MACKEY: I am showing him the deed from Emma Taylor to Joseph Forrest, referred to in the evidence in this case.

Q. (Continuing:) Was the signature like this?

Mr. HENKLE: What are you showing him on that?

Mr. MACKEY: I am showing to the witness the signature of Emma Taylor to the deed from Emma Taylor to Joseph Forrest, dated December 30, 1882, filed as Exhibit A. H. No. 14, in the equity cause of William E. McIntire *vs.* Edwin A. McIntire, and also referred to in this cause

Mr. HENKLE: In the testimony of Mr. Joseph Forrest?

Mr. MACKEY: Referred to in the testimony of Mr. Joseph Forrest in this case.

Mr. HENKLE: Showing the witness that paper, you ask him what?

Mr. MACKEY: Showing the witness that paper, I ask him if the signature here of Emma Taylor is anything like the signature of Emma Taylor to the paper which he saw on Saturday and which was shown him by Mr. McIntire?

151 Mr. HENKLE: The question is objected to as incompetent, irrelevant, and immaterial, for the reason that it is a paper not connected with this case and is offered for the purpose simply

of introducing a comparison of handwriting, which cannot properly be done.

A. Yes, sir; I think it resembles it.

Q. I show you Exhibit A. H. No. 14 in this case, purporting to be a deed from Emma Taylor to Martha McIntire, and ask you to look at the signature thereto of Emma Taylor and state if it looked anything like that.

A. I think not.

Mr. HENKLE: Same objection to question and answer.

Q. I show you a paper, purporting to be a deed from Emma Taylor to Alfred Brown, filed as Exhibit A. H. No. 12 in this case, and ask you to look at the signature thereto of Emma Taylor and state whether it was anything like that.

Mr. HENKLE: Same objection.

A. From my recollection of it, I do not think it did.

Q. Did you ever see an account in the office of Edwin A. McIntire with Emma Taylor?

A. I do not recall doing so.

Recross.

By Mr. HENKLE:

Q. Did you ever see Emma T. McIntire write?

A. Yes, sir; I think I have.

152 Q. Have you seen her write sufficiently to form an idea of her signature so as to enable you to testify to it?

A. Not at this late day. I have not seen her write for some years.

Q. You could not testify to her signature?

A. I could not.

Q. Nor to her handwriting?

A. No, sir.

Q. Are you an expert in handwriting?

A. No, sir.

Q. You do not profess to be an expert in handwriting?

A. No, sir.

Q. Do you recollect whether the office of Edwin A. McIntire while you were there had an account with Martha McIntire?

A. I do not really recollect whether we had an account with Martha McIntire, though I think we did, but I am not positive.

Q. Now, Mr. Harleston, do you not recall that you have frequently heard the name of Emma Taylor in the office of Edwin A. McIntire while you were there, in connection with the business of the office?

A. Yes, sir; I have.

Mr. MACKEY: Objected to as incompetent and irrelevant.

Redirect.

By Mr. MACKEY:

Q. I show you certain papers filed as Exhibits A. H. Nos. 6, 7, 8, 9, 10, and 11, respectively, in the case of William E. McIntire *vs.* Edwin A. McIntire, and heretofore referred to in this case,
153 and ask you to examine the signatures and state what you have to say as to them from your recollection of the signature of Emma Taylor.

Mr. HENKLE: I object upon the ground that the witness has already testified that he is unable to swear to the signature of Emma T. McIntire, and that he is not able to identify her handwriting; and I further object that the papers which are shown to the witness are papers that are put into the case and have no relation, but simply for the purpose of instituting a comparison of handwriting.

A. I cannot say which, if any, is her signature.

FLOYD HARLESTON.

* * * * * * *

Whereupon the defendant EDWIN A. MCINTIRE further deposes and says, being recalled as a witness on behalf of the complainant:

By Mr. MACKEY:

Q. You have been heretofore sworn, I believe, as a witness in this case?

A. Yes.

Q. Have you the deed which was referred to in the testimony of the preceding witness, Harleston?

154 A. I think I have.

Q. The deed from Emma Taylor to Barbara Brown?

A. No; I have the deed he testified to.

Q. Will you produce it?

A. I cannot just now.

Q. Do you object to producing it just now?

A. I do because I have it not here.

Q. Will you produce it at the next session?

Mr. HENKLE: Before he answers that I will say that he is not obliged to produce it, and I will consider whether he shall produce it or not, but he probably will.

A. I fully intended to produce it in a subsequent case which you have instituted in this persecution.

Q. I want you to produce it in this case at the next session.

Mr. HENKLE: I will consider that.

A. I refer the matter to my counsel.

Q. Have you any personal objection to producing it?

A. I told you a moment ago that I intended to offer it in a subsequent cause.

Q. Have you any objection to producing it in this cause?

Mr. HENKLE: Say that you will refer it to your counsel.

A. No. I refer the matter to my counsel.

Mr. MACKEY: General, you ought not to dictate to your client what he should answer.

155 Mr. MACKEY: I call upon you then, Mr. McIntire, to produce it at the next session, and also any other deed which you may have from Emma Taylor or any letters signed by her.

WITNESS: On any business at all?

Mr. MACKEY: I do not mean that you should bring a barrel full, but half a dozen letters from her.

WITNESS: You must take me for a fool. You ask me to produce letters no matter whether they have no relation to this case.

Mr. HENKLE: Solicitor for the defendant Edwin A. McIntire says that Mr. McIntire cannot be called upon to produce papers that are not connected legitimately with the case for the purpose of introducing a comparison of handwriting.

EDWIN A. McINTIRE.

* * * * * * *

Jacob Eller.

Direct examination.

By Mr. MACKEY:

Q. Your wife and yourself have brought a suit against Edwin A. McIntire, have you not, to recover some property?

Q. Yes, sir.

Q. Do you know Edwin A. McIntire personally?

156 A. Yes, sir.

Q. You made, I believe, or at least there is of record, a deed, signed by you and your wife, to one Emma Taylor, of property on First and Qstreets northwest, in this city. I want to ask you if you ever saw Emma Taylor.

A. No, sir; not to my knowledge.

Q. Will you state the circumstances under which you executed that deed—that is, how you came to execute it?

Mr. MACKEY: Just start from the beginning.

Mr. HENKLE: Hold on. I object.

Mr. MACKEY: I offer this testimony for the purpose of showing that under the circumstances connected with this conveyance there was no such person as Emma Taylor. I offer this testimony and the other testimony in this case relating to the signature of Emma Taylor and the transactions of different persons with Mr. McIntire, in which property was either bought by or sold to this alleged Emma Taylor, as circumstances going to show that said person had no existence.

Mr. HENKLE: Solicitor for the defendant objects that the testimony which is proposed to be offered has no relation to the case in which the testimony is being taken, and does not tend in any de-

gree to enlighten it, and therefore incompetent, irrelevant, and immaterial.

A. My wife bought the property and she took sick and we moved out of it, and after awhile—after we went out—it took fire,
157 a few days afterwards; I had no money to fix it up, and me and a friend of mine went to Mr. McIntire and borrowed $350, I think it was, to fix up the house.

Q. Did you and your wife sign a note?

A. I gave a deed of trust, I think. Mr. McIntire did not give me the money; he told me that he would have the house fixed with the money, and after awhile I took sick, and shortly after, when I was able to walk, I went and looked at the house and hardly anything was done to it. I then went to see Mr. McIntire and he told me that the carpenter had run away with the money; so the house was not fixed any further. I took sick and was in bed for a long time, until the interest came due; then Mr. McIntire came after me and wanted the interest. I told him I had not money to pay it. I was in bed then, laid up with paralysis of the head, so that I can hardly open my teeth from that time; so I told him I had no money, I could not give him any, and he could do what he wanted, and I did not want to be bothered with it.

Q. Did he ask you there about fixing up any papers or anything?

A. He asked me at the same time he was there; he says, Did I mean that I would not care about the property? I says, Yes; I cannot pay and I cannot bother with it, and you can do as you please. He went off and came back in about an hour and a half afterwards and gave me a paper to sign, and I signed the paper in bed. Afterwards I found out from Mr. Burkhart, who went with me when I got this money from Mr. McIntire, that it was a deed.

Q. When was that?

158 A. Something like 1882 or 1883.

Q. I will ask you of what country you are a native.

A. Germany.

Q. How long have you been in this country?

A. Twenty-three years.

Q. From the time that Mr. McIntire told you that he would fix up the papers and went off until he came back was about how long?

A. About an hour and — half.

Q. Did he mention the name of Emma Taylor to you at that time?

A. No, sir.

Mr. HENKLE: This is all subject to same objection.

Q. Was any money paid to you at that time?

A. No, sir.

Q. Or at any time since?

A. No, sir.

Mr. HENKLE: Same objection.

Q. Have you ever seen Emma Taylor at any time since then?

A. Not to my knowledge.

Cross-examination.

By Mr. HENKLE:

Q. Mr. Eller, how did you come to bring the suit that you brought against Mr. McIntire?

159 Mr. MACKEY: I object to that as irrelevant and not responsive to anything called out on direct examination.

A. I certainly would have brought that suit long ago if I had been able.

Q. How did you come to bring the suit?

A. Well, I found out that Mr. Mackey had some other suits in the same way. That is the reason I gave it in his hands.

Q. How did you come to see Mr. Mackey?

A. I found out that he had these suits.

Q. How did you find it out?

WITNESS: I do not know whether I have got to state that or not.

Mr. HENKLE: Yes; you have to state it.

Mr. MACKEY: You can state it under my objection, Mr. Eller. I object to any testimony as to conversations or statements made by this witness to his counsel as calling for confidential communications between client and counsel, and I instruct him that, if he likes, he can refuse to answer the question.

Mr. HENKLE: Mr. Eller, I want to know how you came to know that Mr. Mackey had suits against Mr. McIntire.

Mr. MACKEY: You have a right, Mr. Eller, to refuse to answer as to any conversations you had with your counsel or anything you stated to your counsel or he to you in regard to this case.

A. I refuse to answer.

160 Q. You refuse to answer that question?

A. Yes, sir.

Q. I ask you now how you came to know that Mr. Mackey had other suits against Mr. McIntire and you say that you refuse to answer.

A. That is what I said.

Q. And you refuse to answer because it involves a violation of confidential communication between you and Mr. Mackey. Is that it?

A. I think that is right.

Q. Now, I will ask you whether Mr. Mackey did not come to you and propose to you to bring that suit.

A. That is about the same question you asked before.

Q. Do you refuse to answer it?

A. I do.

Q. Now, I want to ask you whether you paid the costs for bringing that suit.

A. I have not yet paid it.

Q. Did you pay eleven dollars to bring that suit?

A. No, sir; because I hadn't it.

Q. Who did pay it? Did Mr. Mackey pay it?

A. I cannot tell, for I do not know.
Q. You know that you did not?
A. No, sir.
Q. Did not Mr. Mackey agree to pay it?

Mr. MACKEY: I object to that for the same reason.

A. I refuse to answer.

161 Q. Did you know Mr. Mackey before you employed him to bring that suit?

A. I have met him once in awhile.
Q. Did you have any acquaintance with him?
A. Not exactly personal.
Q. You did not have any personal acquaintance with him?
A. No, sir.
Q. Where did you see Mr. Mackey in connection with this case?
A. Here in his office.
Q. How did you happen to come here; did he send for you?
A. No, sir; he did not.
Q. How did you happen to come?
A. I came here to see about the case.
Q. What induced you to come?
A. On account of the case.
Q. Who suggested to you to come?
A. I found out that he had other cases.
Q. How did you find it out?
A. Why, I could read it in the newspapers.
Q. Did you find it out in no other way?
A. I was told about it, too.
Q. Who told you?
A. I refused to answer that same question before.
Q. You have no right to refuse to answer, unless you refuse upon the ground that it involves a confidential communication between you and your counsel. Do you refuse on that ground?

A. I have a right to refuse to answer.

162 Q. You have upon that ground, if that is the ground you have. Is that the ground upon which you refuse?

A. Well, the ground is what was said before. I will not answer that question.
Q. Do you refuse to answer because it involves a confidential communication between you and your counsel?
A. I will not answer that question, as I told you before.
Q. Now, I want to ask you whether you paid Mr. Mackey any fees or agreed to pay him any fees.

Mr. MACKEY: I object to that on the ground that it involves, first, a confidential communication between counsel and client; and, secondly, because it is immaterial and irrelevant.

A. I have not paid him any, as I said before, because I have got nothing to pay him with.
Q. Have you agreed to pay him any?
A. I refuse to answer.

Mr. MACKEY: I want to say here that I notify counsel that I will apply to the court at the proper time to have all this examination as to the witness' dealings with his counsel in respect to another suit pending in this court stricken out as irrelevant and incompetent.

Q. Now, Mr. Eller, you say you went to Mr. McIntire to borrow some money to rebuild your house?

A. Yes, sir.

Q. Do you know Mr. Bigelow, a lawyer?

A. Yes, sir; I know him.

163 Q. Did you go to Mr. Bigelow first?

A. Not that I know of.

Q. Did you get Mr. Bigelow to go and see Mr. McIntire about money for you to rebuild your house?

A. No, sir; I went with Mr. Joseph Burkhart, who was a notary public here.

Q. Did you have nothing to do with Mr. Bigelow, the lawyer, about it?

A. Not about borrowing the money.

Q. You and Mr. Burkhart went to see Mr. McIntire to borrow $350?

A. Yes; I think that was it.

Q. Well, how did you come to an agreement with him?

A. I came to that agreement that he wanted a deed of trust, and he took a deed of trust on the property.

Q. He took a deed of trust on the property for $350?

A. Yes, sir.

Q. And what was he to do?

A. What was he to do?

Q. Did he give you the money?

A. He did not. I wanted the money, but he said that he would have it fixed up himself.

Q. Did you have any agreement in writing?

A. Not that way.

Mr. MACKEY: Objected to as irrelevant, immaterial, and incompetent, and not responsive to anything brought out in the examination-in-chief.

164 Q. Did you have agreement in writing?

A. No, sir.

Q. You say that you did not have any agreement in writing?

A. Not under the deed of trust, that I know of.

Q. Did you not have an agreement in writing signed by yourself and wife and witnessed by Mr. Bigelow and Mr. Burkhart?

A. Not that I recollect of.

Q. Did you not have an agreement which authorized Mr. McIntire to pay up some notes on the property?

A. No notes on the property.

Q. On a prior deed of trust?

A. No notes put on the property.

Q. Was there not a prior deed of trust on the property?
A. I do not think there was.
Q. Do you say there was not?
A. I do not believe there was.
Q. Did you not say in the bill which you filed that there was a prior deed of trust?
A. There was a deed of trust I gave him.
Q. Not that you gave him, but that was on the property before?
A. No; I do not think there was.

Redirect.

By Mr. MACKEY:

Q. You bought this property, or your wife bought it?
A. Yes, sir.
Q. And you paid so much a month on it?
A. Yes, sir.
165 Q. And when the fire occurred you owed something on that?
A. Yes, sir.
Q. Balance of the purchase-money?
A. Yes, sir.
Q. You took the money that you got from the insurance and paid the notes?
A. Yes, sir.
Q. And that released the trust?
A. Yes, sir.

Recross.

By Mr. HENKLE:

Q. Are you speaking from what you know?
A. That is correct, I think.
Q. You just now said that there was nothing on it.
A. Nothing on it when I borrowed the money from Mr. McIntire. The house was burned down and it was not repaired.
Q. Did not Mr. McIntire take up the notes? Did not you have an agreement with him authorizing him to take up those notes, and did he not do it?
A. No, sir; not to my recollection.

JACOB ELLER.

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(Adjourned.)

166 OCTOBER 10, 1891.

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Dr. George L. Magruder.

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Direct examination.

By Mr. MACKEY:

Q. You are a practising physician in this city?

A. Yes, sir; for twenty-one years.

Q. Do you know Mary C. Pryor, a colored woman, the complainant in this case; and, if so, for how long?

A. I have known her ever since I have been practising medicine or very shortly afterwards.

Q. Did you ever attend her family?

A. Yes, sir; and her mother's family.

Q. What is she—a colored woman?

A. She is a colored woman.

Q. Do you know her business?

A. I do not know. Her husband had a coal and wood yard in Madison alley, the yard which I believe ran through to F street between 1st and 2nd streets northwest, and he used to saw wood for me.

167 Q. From your observation of her, what is her capacity for business?

Mr. HENKLE: Objected to as incompetent and irrelevant.

Mr. MACKEY: Is she a woman of any education?

A. I do not know the extent of her education, but I should not think she had any education.

Q. Do you think from your knowledge of her that she has any knowledge of real-estate transactions—about deed or deeds of trust?

A. From conversations that I have had with her, I should not think she would have.

Cross-examination.

By Mr. HENKLE:

Q. Have you talked with her upon matters of real estate and deeds and such affairs?

A. Yes, sir; when I saw houses being built on her lot I asked her when she sold it and what she had gotten for it, and she was extremely vague in her answers, and said that she got nothing from the sale of it. I could not get a satisfactory explanation from her. She said something about a deed of trust, about which she did not seem to understand a thing.

Q. Do you think she is less capable of understanding business transactions than colored women in general?

A. Yes; than some, undoubtedly.

Q. I say in general, than the average colored woman?

I think the majority of those I have seen are incompetent to manage business affairs, and I think she is on that line.

168 Q. She is with the majority of colored women?

A. Yes, sir.

Q. Neither above nor below them?

A. She is neither above nor below. I think she is equal to those in her station of life.

Q. Are not the majority of white women, in your judgment, incapable of understanding such things?

A. I generally find that white women understand better than colored women, on account of their education, but I think with white women such matters are complicated.

Q. The average of educated white women would not be likely to understand about deeds and deeds of trust, etc.?

A. In my opinion, that is so.

E. L. MAGRUDER, M. D.

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169 OCTOBER 29, 1891.

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William F. MacLennan.

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Direct examination.

By Mr. MACKEY:

Q. What is your business?

A. Chief of the warrant division in the Treasury Department.

Q. Have you made a study of handwriting at any time?

A. Yes, sir; I might say that I have.

Q. You may state whether you have ever been employed (I do not mean employed in the sense of pay) to examine and compare handwriting and testify in regard to the same.

A. I have frequently, in congressional cases before Congress and in a few cases in the courts.

Q. How is it about your business as chief of the warrant divisions in the Treasury Department—that is, has your knowledge as an expert in handwriting been called into requisition there?

A. Not in connection with my own business, but they frequently come to me from the Treasurer's office.

170 Q. You are known in the Treasury Department as an expert in handwriting—I mean in the comparison of handwriting?

A. Yes, sir.

Q. And you claim to be such?

A. Yes, sir; I may say that I do.

Q. I show you five original papers taken from the court papers in the matter of the estate of David McIntire, No. 1532, orphans' court of the District of Columbia, the said papers being as follows: (1) a paper filed April 11, 1884, and endorsed on the back, "Peti-

tion of Martha McIntire praying that Edwin A. McIntire be appointed administrator *c. t. a.*, and assent of three other heirs thereto," and purporting in the body thereof to have the signature of Emma T. McIntire, among others; (2d) a paper filed July 31, 1885, and endorsed on the back, "Answer of Martha McIntire and Sarah McIntire to the rule to show cause, etc.," and purporting in the body thereof to be signed by Emma T. McIntire, among others; (3rd) a paper filed August 5, 1885, and endorsed on the back, "Petition of Martha, Emma T., and Sarah McIntire for partial distribution," and purporting in the body thereof to be signed by Emma T. McIntire, among others; (4th) a paper filed March 5, 1886, and endorsed on the back, "Petition of Sarah McIntire and others praying the court to allow S. S. Henkle, Esq., att'y, $500 out of funds in the custody of the court belonging to said estate and order of court directing the register of wills to pay the same," and purporting in the body thereof to be signed by Emma T. McIntire, among others; and (5th) a paper filed March 13, 1891, and endorsed on the back, "Petition of four legatees that the
171 assets be turned over to the administrator," and purporting in the body thereof to be signed by Emma T. McIntire, among others. Have you made any comparison of the handwriting in the name Emma T. McIntire as it appears in those five papers just shown you with the handwriting in the name Emma Taylor as it appears in the paper (now shown you) filed as Exhibit A. H. No. 14 to the testimony in the case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, supreme court of the District of Columbia, and purporting to be a deed executed by Emma Taylor to Joseph Forrest on the 30th of December, 1882?

A. I have.

Mr. HENKLE: Question and answer objected to as irrelevant and immaterial. The first series of papers shown the witness as coming from the orphans' court have no relation to this case and are not in the case in any way or sense whatever, and they are brought in from the files of the court simply for the purpose of instituting a comparison of handwriting, which is incompetent and illegal. The paper marked Exhibit A. H. No. 14, shown the witness, has no relation whatever to this case; it is taken from an old case still pending, between different parties, and is brought here only for instituting a comparison of handwriting, which is incompetent, irrelevant, immaterial, and illegal.

Q. What is the result of that examination?

Mr. HENKLE: Same objection as above to the question and to any answer thereto.

172 A. I find that both writings are similar.

Q. In your opinion as an expert, what do you say as to the same party having written the name Emma Taylor in that deed who wrote the name Emma T. McIntire in the five papers handed you from the orphans' court?

Mr. HENKLE: Same objection as above to the question and to any answer thereto.

A. I say that in my opinion they are all written by the same party.

Q. I show you a paper filed as Exhibit A. H. No. 12 to the testimony in the case of Mary C. Pryor *vs.* Edwin A. McIntire *et al.*, equity, No. 12761, supreme court of the District of Columbia, and purporting to be a deed executed by Emma Taylor to Alfred Brown on the 14th of May, 1883. What is your opinion as to the same person having written the name Emma Taylor in that deed who wrote the name Emma T. McIntire in those five papers handed you from the orphans' court?

Mr. HENKLE: Same objection as above to the question and to any answer thereto.

A. This does not appear to be an off-hand signature in this deed just handed me (Exhibit A. H. No. 12 in the Pryor case). It is built up, and it has been written over—what we call patched up. It has the same characteristics of the Emma Taylor in the first deed shown me (Exhibit A. H. No. 14 in equity cause No. 10745) and of the Emma T. McIntire in the five papers handed me *form* the
173 orphans' court. It has a flourish, however, under the signature which the Emma Taylor in this first deed shown me (Exhibit A. H. No. 14 in equity cause No. 10745) has not.

Q. Give us what you regard as some of the characteristics.

A. The capital letter E in the signature Emma Taylor upon these two deeds (Exhibit A. H. No. 12 in the Pryor case and Exhibit A. H. No. 14 in equity cause No. 10745) and in the signature Emma T. McIntire upon these five papers handed me from the orphans' court is the same, with the exception that the top of the capital letter E in the Emma Taylor in this deed (Exhibit A. H. No. 12 in the Pryor case) has been added on. The capital T in the signature Taylor on these deeds (Exhibit A. H. No. 12 in the Pryor case and Exhibit A. H. No. 14 in equity cause No. 10745) and in the signature Emma T. McIntire on the five papers handed me from the orphans' court is the same, except that the capital T in the signature Emma Taylor on this deed (Exhibit A. H. No. 12 in the Pryor case) has a cross over the main stem of the letter added. It has apparently been added on. The small letters in the signature Emma Taylor on these deeds (Exhibit A. H. No. 12 in the Pryor case and Exhibit A. H. No. 14 in equity cause No. 10745) and in the signature Emma T. McIntire on the five papers handed me from the orphans' court are practically the same.

Q. You stated a moment ago that the signature Emma Taylor on this deed (Exhibit A. H. No. 12 in the Pryor case) appeared to be patched up. Will you state what you mean by that?

A. I mean that it has been gone over with a pen and made heavier than it was originally. It has been strengthened and the character of the capital letters changed and strengthened.

Q. Does that signature Emma Taylor on this deed (Ex-
174 hibit A. H. No. 12 in the Pryor case) resemble what I might call, for want of a better expression, a genuine or *bona fide* signature of the party or a labored signature?

A. There is nothing there to excite suspicion except the fact that it has been gone over.

Q. You mean that the name Emma Taylor was first written and then gone over with a pen again?

A. Yes, sir.

Mr. HENKLE: The same objection noted above is repeated to each of these questions and answers.

Q. I will ask you whether you have examined these signatures with a magnifying glass or not.

A. I have and am now doing so.

Q. Now I show you a paper filed as Exhibit A. H. No. 1 to the testimony in the case of Elizabeth Brown *vs.* Edwin A. McIntire *et al.*, equity, No. 12977, supreme court of the District of Columbia, and purporting to be a deed executed by Barbara Brown and Emma Taylor to Martha McIntire on the 25th of April, 1881, and ask whether you have made a comparison of the signature Emma Taylor on that deed with the name Emma T. McIntire on the card now shown you and filed as Exhibit A. H. No. 6 to the testimony in said equity cause No. 10745.

A. Yes, sir. I find in the signature Emma Taylor in the deed just shown me (Exhibit A. H. No. 1 in the Elizabeth Brown case) that in the first letter "m" in the word "Emma" the pen is raised after the second downward stroke, and another character would make it read "na" instead of "ma." I find the same characteristic in the second letter "m" in the word "Emma" in the
175 name Emma T. McIntire on the Exhibit A. H. No. 6, filed with the testimony in said equity cause No. 10745.

Q. Now, comparing the name Emma T. McIntire on the Exhibit A. H. No. 6 in said equity cause No. 10745 with the signature Emma T. McIntire in the five papers shown you from the orphans' court, what do you say as to the *name* party having written the name Emma T. McIntire on Exhibit A. H. No. 6 in said equity cause No. 10745 and the signature Emma T. McIntire in the five papers handed you from the orphans' court?

A. Well, I think they were written by the same party.

Q. What do you say, then, as to the person who wrote the signature Emma Taylor in the deed Exhibit A. H. No. 1, filed in the said Elizabeth Brown case?

A. Well, it has the same characteristics in the letter "m" just referred to. It does not look like the same writing. It does not look like the same party, but it may have been written by the same party. It is difficult to say in a matter of this kind.

Q. Have you examined the signature "Wm. Helmick" under that of Floyd Harleston as a witness to the deed filed as Exhibit A. H. No. 1 to the testimony in the said Elizabeth Brown case with

the signature "Wm. Helmick" to the acknowledgment of that and the other deeds shown you?

A. I have.

Q. What is your opinion as to their having been written by the same person?

A. I do not think that the signature "Wm. Helmick" as a witness to this deed (Exhibit A. H. No. 1 in the Elizabeth Brown case) was written by the same party who signed "Wm. Helmick"
176 as justice of the peace to the acknowledgment.

Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. Now, looking at that deed (Exhibit A. H. No. 1 in the Elizabeth Brown case), I call your attention to the words in the third and fourth lines of the first page, to wit, "Barbara Brown, of the city of Washington, in the District of Columbia, and Emma Taylor, of the same place," and I ask you to state whether or not those words are written in the same ink and what they have the general appearance of.

A. They appear to be written in different ink. The words "and Emma Taylor, of the same place," appear to be written in different ink from that in which are written the words, "Barbara Brown, of the city of Washington."

Q. Will you hold that deed (Exhibit A. H. No. 1 in the Elizabeth Brown case) up to the light and give us an opinion as to how the word "Martha," in the name "Martha McIntire," in the sixth line of the first page of that deed (Exhibit A. H. No. 1 in the Elizabeth Brown case), was written?

A. It was written over an erasure.

Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. I call your attention also to other written words below that, on the first page of this same deed (Exhibit A. H. No. 1 in the Elizabeth Brown case); for instance, to the word "parties," in the ninth line; to the word "them," in the eleventh line; to the
177 word "have," in the thirteenth line; to the word "do," in the fourteenth line, and ask you what has been the result of your examination as to those words?

A. Well, they appear to have been changed; some additions made and some changes.

Q. Now, on the second page of this same deed take the words "and Emma Taylor," in the tenth line, and the name Barbara Brown, before those words in the same line; what have you to say about that?

A. The words "and Emma Taylor" were written at a time subsequent to that at which the name Barbara Brown, immediately before them, was written, as also the word "each," in the line below or the eleventh line.

Q. Now, take these other words on the second page of this same deed; for instance, the words "parties" and "have," in the twenty-

eighth line, and the word "their," in the twenty-ninth line, all being in the testatum clause of the deed, and state what appears from your examination—that is, what is the result of your examination.

A. They were written in the same ink as the other amendments or additions, and the word "their" seems to have been changed from the original.

Q. What does the word "their" look as if it originally had been?

A. I can see the "h" and "e," but the other, if anything followed, is covered up by the "ir." There seems to have been added "t i r" in a different-colored ink.

Q. What about the endorsement of the name "Martha
178 McIntire" on the back of this same deed?

A. There seems to be an erasure just above the place where the name "Martha McIntire" is written.

Q. As if a name had been written there and Martha McIntire written below it?

A. Yes, sir.

Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. Now, I hand you another deed (being Exhibit A. H. No. 2 filed with the testimony in the said case of Elizabeth Brown) purporting to be executed by Emma Taylor to Martha McIntire on the sixth of September, 1884, and call your attention to the signature Emma Taylor in that deed and ask you whether you have compared that signature with the other signatures, Emma Taylor, in the deeds previously shown you and Emma T. McIntire in the five papers handed you from the orphans' court.

A. Yes, sir.

Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. What have you to say as to the result of your comparison?

A. It does not appear to me like a genuine signature. It looks like a forced signature. It bears some resemblance to the signature Emma Taylor in this deed (Exhibit A. H. No. 12 in the Pryor case), however; but there is one stroke lacking in the word "Emma," one stroke in the second "m" in the signature Emma Taylor
179 in this deed (Exhibit A. H. No. 2 in the Elizabeth Brown case), so that it reads "Emna."

Q. Well, what relation has that to the other deeds where you have the same thing?

A. It would appear that the writer had a disposition to drop characters or portions of letters.

Mr. HENKLE: Do you mean disposition or habit?

WITNESS: You might call it "habit," or peculiarity. I do not know. I should call it a peculiarity. I do not mean by this habit that the party drops always the same letter or stroke. It appears to be a peculiarity in the dropping of some stroke in a signature.

I find it in the Exhibit A. H. No. 1 in the Elizabeth Brown case and on Exhibit A. H. No. 6 in the equity cause No. 10745.

Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. I hand you Exhibit A. H. No. 14 in the said Pryor case (equity, No. 12761), purporting to be a deed from Emma Taylor to Martha McIntire, dated the 31st of May, 1884, and I call your attention to the signature Emma Taylor in that deed and ask you whether you have made any comparison of it with the other signatures, Emma Taylor, in the deeds previously shown you and Emma T. McIntire in the five papers handed you from the orphans' court.

A. I have.

Q. What is the result of that examination?

A. I should say it was written by the same party.

180 Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. I now call your attention to Exhibit A. H. No. 3 in the said Pryor case (equity, No. 12761) and to the last two lines on the second page of that deed, and especially to the words "written over an erasure" and the name "Wm. Helmick" written underneath, and ask you whether the name Wm. Helmick there written was written before those words "written over an erasure" or after them.

A. I should say that the signature "Wm. Helmick" was written first.

Q. Why do you think so?

A. The word "written" is very distinctly written in a different-colored ink, and on top of the first character of the capital letter "W" in the name "Wm. Helmick," written just underneath the words "written over an erasure." I am examining this now with a powerful magnifying glass and I can see it very distinctly.

Q. I wish you to look again at this same Exhibit A. H. No. 3 in the Elizabeth Brown case, and examine the name Martha McIntire, as it appears in two places on the first page, and ask you what you have to say in respect to that.

A. The name Martha McIntire appears to have been written over an erasure in both places.

Q. On the second page of this same deed I call your attention to the word "her" written in two places in the habendum clause and to the same word "her" written in six places in the covenant clauses and ask you what you have to say in respect of that

181 word in those different places having been changed from some other word; and, if so, from what other word.

A. They all appear to be changed from the word "his" to the word "her."

Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. I hand you this paper (being Exhibit A. H. No. 1 in the Elizabeth Brown case), and call your attention to the words "and Emma

Taylor," written immediately following the words "Barbara Brown" in the two places in the acknowledgment to that deed, and ask what you have to say in regard to their having been written at the same time and in the same ink.

A. I think that they were not written at the same time or in the same ink; also the words "both being unmarried and," after the words "Barbara Brown and Emma Taylor," where they occur in the second place in the acknowledgment, I think, were written at a different time and in different ink.

Q. Now, in regard to the word "parties" in that acknowledgment to that deed, what have you to say?

A. The letters "ies" in the word "parties" appear to have been written over an erasure.

Q. How about the word "their," occurring in that same acknowledgment to that same deed?

A. It has been changed from "her" to "their" at a different time at which the word "her" was written.

182 Q. What have you to say as to so many of the words as you have testified were, in your opinion, inserted in this acknowledgment to this same deed (Exhibit A. H. No. 1 in the Elizabeth Brown case), after the name Barbara Brown was written, being written in the same ink in which the name Emma Taylor is written in the body of that same deed?

A. I think that they are written in the same ink in which the name Emma Taylor is written in the body of the deed.

Q. And whether by the same hand?

A. And by the same hand.

Q. Were they written by the same hand that wrote the name "Wm. Helmick" to the acknowledgment of this same deed?

A. They were not.

Mr. HENKLE: Same objection above noted to all these questions and answers.

Q. I find, Mr. MacLennan, that in scrutinizing these various signatures and in giving your testimony in regard to their similarity, etc., you have omitted to answer fully the question propounded you as to Exhibit A. H. No. 12 to the testimony in the case of Mary C. Pryor against Edwin A. McIntire, equity, No. 12761. I asked you in that question what is your opinion as to the same person having written the name Emma Taylor in that deed who wrote the name Emma T. McIntire in those five papers handed you from the orphans' court. What do you say as to that?

A. I say that, in my opinion, they are all written by the same party.

183 Q. I also ask you now in regard to the signatures in the following deeds about which you have already testified—that is to say, Exhibit A. H. No. 14 to the testimony in the case of Mary C. Pryor against Edwin A. McIntire, equity, No. 12761; also Exhibits A. H. Nos. 1 and 2 to the testimony in the case of Elizabeth Brown against Edwin A. McIntire, equity, No. —. What do you say in regard to the same person having written the signature

Emma Taylor in those three deeds just shown you and having written the name Emma T. McIntire in the five papers from the orphans' court previously shown you?

A. I am also of the opinion that all these signatures were written by the same party.

Mr. HENKLE: Same objection above noted to all these questions and answers and cross-examination waived.

WILLIAM F. MACLENNAN.

* * * * * * *

FLOYD HARLESTON being recalled.

* * * * * * *

By Mr. MACKEY:

Q. When you testified in the case of Mary C. Pryor against Edwin A. McIntire you testified in relation to witnessing this paper, being filed therein as Exhibit A. H. No. 1, in the equity cause No. 12977 of Brown *vs.* McIntire *et al*, and that you did not remember the presence of Emma Taylor at the time. I want to ask you
184 if at the time you witnessed the paper you remember the presence of Mr. Helmick and Mr. Peugh witnessing the paper at the same time you did.

A. I cannot say that I remember their presence, but, of course, I would not have signed as a witness if they had not been present.

Q. You would not have signed that deed as a witness without their presence?

A. No, sir.

Q. Do you not remember their presence?

A. No, sir; I do not remember the circumstance of the deed being signed.

Q. You signed it first, as a witness, before they did?

A. Yes, sir; I judge so by my signature being at the top.

Q. So that you could not have told when you signed it whether they were going to sign it or not, could you?

A. No, sir; I could not say positively in that regard.

Q. You met Mr. Edwin A. McIntire out on the pavement just before you came in here, did you not?

A. Yes, sir.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. Was it in relation to this case?

A. No, sir; I simply told Mr. McIntire that I had received another subpœna, but I did not tell him what case it was nor ask him anything about it.

Q. Did you have any talk with him about any of these cases?

A. No, sir.

Q. Did you talk about Emma Taylor?

A. He asked me whether I recollected seeing Emma Taylor.

185 Cross-examination.

By Mr. HENKLE:

Q. Would you have signed your name as a witness to that paper, witnessing the signatures of the parties who executed the deed—Barbara Brown and Emma Taylor—unless you had seen them do it?

A. No, sir.

Q. Were you familiar with the signature of Justice Helmick?

A. Yes, sir; I have seen him sign his name a great many times.

Q. So that you think you could identify your signature?

A. Yes, sir.

Q. Is that his signature to the acknowledgment?

A. Yes, sir.

Q. There is his signature as a witness; what do you think of that?

A. I think that is the same.

Redirect.

By Mr. MACKEY:

Q. Do you profess to be an expert in handwriting?

A. No, sir.

Q. And you say that this signature of Helmick to the acknowledgment and that as a witness look something alike?

A. I say that I have seen Judge Helmick sign his name a great many times, and I believe that to be his signature.

Q. Of course, if the signatures of Barbara Brown and Emma Taylor had been to this deed when you witnessed it, you would not have witnessed it unless you had seen them sign it?

186 A. Not unless they acknowledged them to be their signatures in my presence.

Q. And if this paper had been handed to you for witnessing it without the name of Emma Taylor, and you supposed it to be simply a deed of Barbara Brown, of course you would have witnessed it if Barbara Brown was present?

A. I do not know but what I would, unless I had seen the body of the deed and saw that there were two.

Q. If this purported to be a deed of Barbara Brown without the name of Emma Taylor appearing in the body of the deed at all, and it had been signed by Barbara Brown, and she had acknowledged to you that to be her signature, or you had seen her write it, of course you would have witnessed it?

A. Naturally I would.

Recross.

By Mr. HENKLE:

Q. You knew Miss Emma T. McIntire, did you not?

A. Yes, sir.

Q. You know that it was not she who wrote that name—Emma Taylor—to that deed?
A. Yes, sir.

Mr. MACKEY: Objected to because it is not responsive to anything called out by the direct examination.

Q. You know that signature was not made by Emma T. McIntyre, do you not?
A. Yes, sir.

Q. Do you know that Miss Emma T. McIntire was well
187 known to Justice Helmick?
A. Yes, sir.

Redirect.

By Mr. MACKEY:

Q. You say that you did not see Emma T. McIntire write that. That is all?
A. Yes, sir. I say so because I would not have signed as a witness if she had signed some other name than her own.
Q. Mr. Henkle asked you if Emma T. McIntire wrote that and you answered no.
A. I replied no because I could not have signed as a witness if she had written it.
Q. You mean by that you did not see her write that?
A. No, sir; I did not see her write that.

FLOYD HARLSTON.

* * * * * * *

188 DECEMBER 22, 1891.

* * * * * * *

George W. Dunn.

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Direct examination.

By Mr. MACKEY:

Q. What is your occupation?
A. I am a photographer and a member of the firm of the Bell Lithographing Company.
Q. Look at the photographs pasted upon this card-board now handed you and state whether you ever saw them before.
A. Yes, sir; these photographs were made by our firm.
Q. What is this photographic signature Emma Taylor, marked No. 1 on this card-board, a photograph of?

Mr. HENKLE: I object to the question and to the answer thereto for the reason that the signature proposed to be proven has no relevancy to this case and is introduced into it simply for instituting a comparison of handwriting which is incompetent and inadmissible,

and so far as this objection is applicable to any or all of the signatures which are proposed to be proven it is understood to be made without repetition.

189 A. It is a photograph of the signature Emma Taylor to a deed marked "Exhibit A. H. No. 14" in equity cause No. 10745, of McIntire *vs.* McIntire, in the supreme court of the District of Columbia.

Q. What is this photographic signature Emma Taylor, marked No. 2 on this card-board, a photograph of?

A. It is a photograph of the signature Emma Taylor to the deed marked "Exhibit A. H. No. 12" in the equity cause No. 12761, of Pryor *vs.* McIntire, in the supreme court of the District of Columbia.

Q. What is this photographic signature Emma Taylor, marked No. 3 on this card-board, a photograph of?

A. It is a photograph of the signature Emma Taylor to the deed marked "Exhibit A. H. No. 14" in said equity cause No. 12761, of Pryor *vs.* McIntire.

Q. What is this photographic signature Emma Taylor, marked No. 4, a photograph of?

A. It is a photograph of the signature Emma Taylor to the deed marked "Exhibit A. H. No. 2" in the equity cause No. —, of Brown *vs.* McIntire, in the supreme court of the District of Columbia.

Q. What is this photographic signature Emma Taylor, marked No. 5 on this card-board, a photograph of?

A. It is a photograph of the signature Emma Taylor to the deed marked Exhibit A. H. No. 1 in the said equity cause No. —, of Brown *vs.* McIntire.

Q. What are these photographic signatures and writing, marked No. 6 on this card-board, photographs of?

190 A. The whole of it is a photograph of the attesting clause of the deed marked Exhibit A. H. No. 1 in said equity cause No. —, of Brown *vs.* McIntire.

Q. What is this photographic signature Emma T. McIntire, marked No. 7 on this card-board, a photograph of?

A. It is a photograph of the signature Emma T. McIntire on the card filed as Exhibit A. H. No. 8, on page 104 of the complainant's testimony in the said equity cause No. 10745, of McIntire *vs.* McIntire.

Q. What is this photographic signature Emma T. McIntire, marked No. 8 on this card-board, a photograph of?

A. It is a photograph of the signature Emma T. McIntire on the paper filed March 5, 1886, in the matter of the estate of David McIntire, deceased, and endorsed "petition of Sarah McIntire and others," etc., and being one of the papers from the orphans' court offered in evidence in connection with the testimony of William F. MacLennan in this case.

Q. What is this photographic signature Emma T. McIntire, marked No. 9 on this card-board, a photograph of?

A. It is a photograph of the signature Emma T. McIntire where it first appears on the paper filed July 31, 1885, in the matter of the estate of David McIntire, deceased, and endorsed "answer of Martha McIntire" and others, and being one of the papers from the orphans' court offered in evidence in connection with the testimony of William F. MacLennan in this case.

Q. What is this photographic signature Emma T. McIntire, marked No. 10 on this card-board, a photograph of?

191 A. It is a photograph of the signature Emma T. McIntire on the paper filed August 5, 1885, in the matter of the estate of David McIntire, deceased, and endorsed "petition of Martha, Emma T., and Sarah McIntire for partial distribution," and being one of the papers from the orphans' court offered in evidence in connection with the testimony of William F. MacLennan in this case.

Q. What is this photographic signature Emma T. McIntire, marked No. 11 on this card-board, a photograph of?

A. It is a photograph of the signature Emma T. McIntire on the card filed — Exhibit A. H. No. 11, on page 106 of the complainant's testimony in the said equity cause No. 10745, of McIntire *vs.* McIntire.

Q. What is this photographic signature Emma T. McIntire, marked No. 12 on this card-board, a photograph of?

A. It is a photograph of the signature Emma T. McIntire on the card filed as Exhibit A. H. No. 6, on page 103 of the complainant's testimony in the said equity cause No. 10745, of McIntire *vs.* McIntire.

Q. What is this photographic signature Emma T. McIntire, marked No. 13 on this card-board, a photograph of?

A. It is a photograph of the signature Emma T. McIntire where it appears in the second place on the paper filed July 31, 1885, in the matter of the estate of David McIntire, deceased, and endorsed "answer of Martha McIntire" and others, and being one of the papers from the orphans' court offered in evidence in connection with the testimony of William F. MacLennan in this case.

192 Q. You superintended the photographing of these signatures?

A. Yes, sir.

Q. You fixed and arranged them for photographing?

A. Yes, sir.

Q. You may state upon what scale those photographs are made.

A. The- were made double the scale of the originals as nearly as possible by photographic measurements.

(Cross-examination waived.)

GEO. W. DUNN.

* * * * * * *

Mr. MACKEY: Solicitors for the complainant here give in evidence this card-board containing the photographic signatures to which the witness has just testified.

(And the same is herewith filed in evidence and marked "Exhibit A. H. No. 15.")

Mr. HENKLE: To the admission of which solicitor for the defendant Edwin A. McIntire objects upon the ground that if the signatures were competent in any view of the case the best evidence would be the original signatures and not photographic copies or copies of any kind. So long as the originals are in existence and accessible they are the best evidence, and secondary evidence of copies cannot be introduced until it is shown that the originals have been destroyed or lost or that the party is incapable of producing them; and notice is here given upon the record to the solicitors for complainant that a notice will be made at the hearing of the cause to strike out all of this testimony.

193 FEBRUARY 2, 1892.

* * * * * * *

William G. Clary.

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Direct examination.

By Mr. MACKEY:

Q. Mr. Clary, what is your business?

A. I am employed as a clerk in the Washington Title Insurance Company of this District.

Q. Are you familiar with the land records of the District of Columbia?

A. I am from an experience of nearly five years.

Q. Have you made any recent examination of those records for the purpose of ascertaining what deeds have been executed to and by Emma Taylor?

A. Yes, sir.

Q. Will you state the result of that examination?

Mr. HENKLE: What is the object of this testimony?

Mr. MACKEY: The object of this testimony is to show that the witness has searched for every deed executed to and by Emma Taylor which appear upon the land records of the District of Columbia.

194 Mr. HENKLE: I object to the question and to any answer thereto upon the ground that it is totally irrelevant, immaterial, and incompetent.

A. Here is a memorandum, which I hand to the examiner and which I have prepared from an examination of the land records of the District of Columbia, of the contents of the deeds of record from the year 1880 to January the first, 1892, executed to and by any person named Emma Taylor.

Mr. HENKLE: I renew my objection to the answer as irrelevant, incompetent, and immaterial.

Q. I notice upon this memorandum submitted to the examiner by you the name of Emma S. Taylor.

A. I do not know. I took the name Emma Taylor with or without any middle letter—that is, all names of Taylor with the name Emma connected with it in any way.

Q. Here is a deed from Emma Taylor *et al.*, heirs-at-law of James H. Taylor, deceased, to Inane C. Turner; another deed from Elizabeth Brown and her husband, John Brown, and others to Catherine Harper, widow, in which is also the name of Emma Taylor.

A. Yes, sir.

Q. Do you know whether the Emma Taylor mentioned in these two deeds is the same Emma Taylor mentioned in this case?

A. I do not know.

Mr. HENKLE: Cross-examination waived.

WM. G. CLARY.

Subscribed and sworn to before me this 2nd day of February, 1892.

ALBERT HARPER, *Examiner.*

195 Mr. MACKEY: I here give in evidence that memorandum or abstract of the examination made by the witness to which he has testified.

Mr. HENKLE: To the admission of which I object as irrelevant, incompetent, and immaterial.

NOTE.—And it is agreed that said memorandum or abstract may be returned to the witness and copied upon this record as follows:

Edwin A. McIntire, trustee,
to
Emma Taylor.

Deed dated April 1, 1881, and recorded April 28, 1881, in Liber 967, folio 180, of the land records of the District of Columbia.

Lot 36, in Leonard Simmermacher's subdivision of original lot 5, in square 1002.

G. W. F. Swartzell
to
Emma Taylor.

Deed dated January 12, 1882, and recorded January 20, 1882, in Liber 992, folio 273, of the land records of the District of Columbia.

Part of lot 21, square 77, beginning at a point on the south line of north I street 17 feet eastwardly from the northwest corner of said lot, thence eastwardly 18 feet southwestwardly on a line at right angles with said street 90 feet 11 inches, then west 8
196 feet 7½ inches, then south to the south line of said lot, then west 9 feet 4½ inches, and then north to the beginning.

Annie M. Ackerman
to
Emma Taylor.

Deed dated April 24, 1882, and recorded April 27, 1882, in Liber 1002, folio 348, of the land records of the District of Columbia.

Lot 21 of Bond & Bramhall trustees' subdivision of original lot 9, in square 992.

Hartwell Jenison *et ux.*, Malvina E.,
to
Emma Taylor.

Deed dated April 19, 1882, and recorded April 21, 1882, in Liber 1003, folio 188, of the land records of the District of Columbia.

Part of lots 21 and 22, in square 569, beginning at a point on F street north 19 feet from the northeast corner of lot 20, in said square, and running east on line of F street 26 feet, then south 100 feet to a 20-foot alley, then west along the line of said alley 26 feet, and then north 100 feet to the beginning.

Margaret Eller *et vir*, Jacob,
to
Emma Taylor.

Deed dated January 11, 1882, and recorded April 19, 1882, in Liber 1003, folio 149, of the land records of the District of Columbia.

197 Lot 43, in the subdivision of square 615.

Willis Herndon *et ux.*, Mary,
to
Emma Taylor.

Deed dated May 6, 1882, and recorded June 26, 1882, in Liber 1009, folio 271, of the land records of the District of Columbia.

Part of lot 4, in square 154, beginning at the southeast corner of said lot 4 and extending west along the north side of R street 21 feet 8 inches, thence north 90 feet to the north line of said lot 4, then east on said north line 21 feet 8 inches to the northeast corner of said lot, and thence south 90 feet to the beginning, subject to two trusts recorded in Liber 949, folio 375, and Liber 965, folio 493.

Edwin A. McIntire
to
Emma Taylor.

Release dated June 10, 1882, and recorded June 26, 1882, in Liber 1009, folio 273, of the land records of the District of Columbia.

Release of two trusts from Willis Herndon *et ux.*, recorded in Liber 949, folio 375, and Liber 965, folio 493, upon part of lot 4, in square 154; same description as next above.

William E. McIntire, one of the heirs of Henry McIntire, deceased,
to
Emma Taylor.

Deed dated December 2, 1882, and recorded December 2, 1882, in Liber 1091, folio 391, of the land records of the District of Columbia.

198 Lot 81 of Wilson, Mandley and Warner's subdivision of lots in square 276; also part of lot 17, in square 496, being house 490 F street southwest; also part of lots 28, 29, 30, and 31 of Michler's subdivision of square 1026, the said three pieces being the same properties which were conveyed to the late Henry McIntire by deeds recorded in Liber 899, folio 410; Liber E. C. E. 30, folio 19, and Liber 892, folio 49.

Emma Taylor
to
Joseph Forrest.

Deed dated December 13, 1882, and recorded January 4, 1883, in Liber 1029, folio 44, of the land records of the District of Columbia.

Part of lot 4, in square 154; same land as described in Liber 1009, folio 271.

Emma Taylor
to
Lettie F. McIntire.

Deed dated May 21, 1883, and recorded June 1, 1883, in Liber 1041, folio 277, of the land records of the District of Columbia.

Lot 81, in square 276; part of lot 17, in square 496, beginning at a point on F street south 14 feet east of the northwest corner of said lot, then south 122 feet 2 inches, then east 14 feet, then north 122 feet 2 inches, then west with the line of said F street 14 feet to the beginning; also part of lots 28, 29, 30, and 31 of Michler's subdivision of square 1026, beginning at a point due north 32

199 feet from the southwest corner of said lot 28, thence north 16 feet, thence east 88 feet, thence south 16 feet, and then west 88 feet to the beginning, being the same land described in the deed recorded in Liber 1091, folio 391.

Edwin A. McIntire, trustee,
to
Emma Taylor.

Deed dated August 28, 1882, and recorded May 16, 1883, in Liber 1043, folio 3, of the land records of the District of Columbia.

The northeast one-fourth part of lot 31, in square 388, *begin* the east 13 feet front on E street southwest of said lot by depth of 62½ feet.

Emma Taylor
to
Alfred Brown.

Deed dated May 14, 1883, and recorded May 16, 1883, in Liber 1043, folio 5, of the land records of the District of Columbia.

Same land as next above.

Emma Taylor
to
Martha McIntire.

Deed dated May 1, 1884, and recorded October 14, 1886, in Liber 1210, folio 182, of the land records of the District of Columbia.

200 Part of lot 21, in square 77, described as in deed recorded in Liber 992, folio 273, and also part of lots 21 and 22, described as in deed recorded in Liber 1003, folio 188.

Elizabeth Brown *et vir*, John; James Harper *et ux.*, Helen; William Harper *et ux.*, Kitty; Matilda Taylor *et vir*, Landon; Mary Carpenter *et vir*, Elias; Emma Taylor, and Margaret Harper
to
Catherine Harper, widow.

Deed dated August 15, 1888, and recorded August 21, 1888, in Liber 1336, folio 239, of the land records of the District of Columbia.

Parties of first part, being heirs-at-law of Henry Harper, deceased, convey lot 36, in section 3 of Barry farm.

Barbara Brown, Emma Taylor
to
Martha McIntire.

Deed dated April 25, 1881, and recorded April 7, 1891, in Liber 1578, folio 86, of the land records of the District of Columbia.

Lot 36 of Leonard Simmermacher's subdivision of original lot 5, in square 1002.

201–204 Emma Taylor
to
Martha McIntire.

Deed dated September 6, 1884, and recorded April 7, 1891, in Liber 1578, folio 88, of the land records of the District of Columbia.

Lot 43, in subdivision of lots in square 615; also lot 36, in Leonard Simmermacher's subdivision of original lot 5, in square 1002; also lot 21 of Bond & Bramhall, trustees', subdivision of original lot 9, in square 992.

Emma S. Taylor *et al*, heirs-at-law of James H. Taylor, deceased, } to Inane C. Turner. }

Deed dated December 17, 1883, and recorded December 18, 1883, in Liber 1064, folio 297, of the land records of the District of Columbia.

West 24 feet of lot 64, in square 545.

Mr. MACKEY: Solicitors for the complainant here close the evidence-in-chief on her behalf.

* * * * * * *

205 *Testimony for Defendants.*

JULY 14, 1892.

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Martha McIntire.

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Direct examination.

By Mr. HENKLE:

Q. Miss McIntire, please state your full name and your residence.

A. Martha McIntire; I live at No. 1309 T street northwest, in this city.

Q. And you are one of the defendants in this suit of Pryor?

A. Yes, sir.

Q. How long have you lived in Washington?

A. Well, off and on, from 1866.

Q. Do you own the piece of property on F street between 1st and 2nd streets northwest, in this city, being parts of lots Nos. 21 and 22, in square 569?

A. Yes, sir.

Q. You own that property, do you?

A. Yes, sir; that is my property.

Q. Well, now, will you be kind enough to give us the his-
206 tory of your title to that property—that is, your first connection with it?

* * * * * * *

A. I bought this property for a small sum, I having to pay some back taxes and a deed of trust that was on it; and after I had bought it and got the deed—I think I got the deed; I will not say that I got a deed—I found that instead of there being $30 of back taxes, as Pryor had said, there were $300 of back taxes, and then I gave it up, as I did not want property of that kind.

Q. From whom did you buy it?

A. From Pryor.

Q. Thomas Pryor?

A. I do not know his first name.

Q. A colored man?

A. Yes, sir; a colored man.
Q. Do you remember when that was?
A. About twelve or thirteen years ago, I guess.
Mr. HENKLE: About 1881, was it?
Mr. MCINTIRE: Yes.
WITNESS: Somewhere about that.
207 Q. Do you remember what was the deed of trust which you assumed—that is, what was the amount of it?
A. It was over four hundred dollars.
Q. And you were to pay that deed of trust and the taxes which were in arrears?
A. Yes, sir.
Q. And you were informed that the taxes were how much?
A. Thirty dollars, when in reality they were $300.
Q. After you bought it you say that you took a deed for it?
A. Yes, sir; I think I took a deed from Pryor. I did not want to buy it at all when I found out that there was so much to pay on it.
Q. What did you do with it after you bought it—I mean, did you rent it to anybody?
A. Yes, sir; Pryor took a lease on it for a year, I think it was, so that he could have a little coal and wood yard there.
Q. Will you look at this paper which I now hand you and say if that is the lease?
A. Yes, sir.
Q. Is that your signature on there?
A. Yes, sir.
Q. When was it made?
A. May 5th, 1881.
Q. It was made at the time it bears date?
A. Yes, sir.
Q. You remember making that lease, do you?
A. Yes, sir; since I have seen my signature there I remember making it.
Q. Did Pryor sign that too?
208 A. I do not know. I expect so.
Q. Where was this paper signed, do you remember?
A. It was signed in Washington here.
Q. Well, at what place; at the office of your brother, Edwin A. McIntire?
A. At my brother's office. That is where I attended to all of my business.
Q. Do you remember whether or not you saw Thomas Pryor sign that paper?
A. No, sir; I did not see him sign it. I never saw him.
Q. Then, when you speak of making this contract with him, what do you mean?
A. I mean that it was made through my brother, Edwin A. McIntire, who was my agent.
Q. And this contract was made entirely through him?
A. Yes, sir.

Q. And this paper was signed at the time it purports to be signed?

A. Yes, sir.

Mr. HENKLE: I here give that paper in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit No. 16.)

Q. Now, Miss McIntire, you say that after you discovered that the taxes were more than you anticipated you gave it up. What did you do—that is, I want to know whether you notified Pryor that you would not take it.

A. I just told my brother, Edwin A. McIntire, that I would
209 not have anything to do with it.

Q. Did you receive any rents from the property under that contract?

A. I think that a little rent was paid, but very little.

Q. Had you paid Pryor anything on account of that contract?

A. Five dollars.

Q. Well, now, what was your next connection with the property?

Mr. MACKEY: Which contract? Do you mean the contract of purchase?

Mr. HENKLE: Yes.

A. Some years after that I bought the property near the corner of 21st and I street- and also the F-street lot.

Mr. MACKEY: That is what is known as the Southey property?

Mr. HENKLE: Yes.

Mr. MCINTIRE: No. 2112 I street northwest.

Q. You bought this property and the property No. 2112 I street northwest, known as the Southey property, together?

A. Yes, sir; the F-street property and the property near the corner of 21st and I streets.

Q. From whom did you buy?

A. I bought those two properties from Emma Taylor.

Q. And what did you pay for the two properties?

A. Twenty-five hundred dollars for the two.

210 Q. And how did you pay it?

A. I paid it in cash.

Q. The whole of it in cash?

A. Yes, sir.

Q. Did you or not take a deed for the two properties?

A. Yes, sir; I had deeds.

Q. By whom were the deeds made to you?

A. They were from Emma Taylor.

Q. With whom was that contract made; was it made directly with Emma Taylor by you or through an agent?

A. Through my brother, Edwin A. McIntire, who was my agent all the way through, and who attends to all my business affairs.

Q. Was the money paid by you directly to Emma Taylor or how was it paid?

A. No, sir; I gave the money to my brother, Edwin A. McIntire.

Q. Now, I want to know if you at any time met Emma Taylor.

A. I met her once.

Q. When and where was it?

A. I met her at the office of my brother, Edwin A. McIntire.

Q. Can you give us an idea of the time?

A. I cannot tell you exactly when it was. I supposed that she was there on business the same as I was. I was introduced to her and just met her once.

Q. Do you retain any recollection of her personally so as to describe her appearance?

A. No, sir; nothing particularly. She was, I judge, of middle age, medium height, and had dark hair. I saw her but the
211 once. I did not know then that I would have to testify about her or I would have noticed her more closely and have remembered her appearance. She was a total stranger to me.

Q. Was that before or after your purchase?

A. About that time. I supposed that she was there on business. I used to so often drop in his office and so many things used to come up that I cannot call to mind everything that did take place there.

Q. Do you remember when it was that you made that purchase?

A. I do not remember the exact time.

Q. I want to be a little more emphatic about your paying for this property. You say that you paid twenty-five hundred dollars in cash at the time you got the property?

A. Yes, sir.

Q. Whose money was it that you paid?

A. My own money.

Q. Had your brother, Edwin A. McIntire, or anybody else any interest in it in the world?

A. No, sir; it was my own money.

Q. And it did not come through him or through anybody else, but it was yours?

A. No, sir; it was my own money.

Q. Now, I want to know if you had any transaction with a Mr. Hartwell Jenison on account of that property at any time.

A. Mr. Jenison—I did not know what his first name was—he was in the Treasury Department—he gave me a quitclaim. I got him to give me a quitclaim, and I paid him one hundred dollars for it.

Q. How did you come to want that quitclaim?

A. Well, after I built the houses on F street there were
212 several parties who wanted to buy them, and one of the parties that I wanted to sell to saw in the papers a mistake in the deed of the F-street property, and then——

Q. (Interposing.) A mistake in the deeds from Taylor to you?

A. Yes, sir; a mistake in the deed from Emma Taylor to me.

Q. Of the F-street property?

A. Of the two properties, the F-street property and the I-street property. The two properties were together in the deed, and there

was a mistake in the deed. I did not want the property if there was anything wrong about it. I did not want to lose it after paying for it, and I found out in the meantime that a quitclaim was necessary from Mr. Jenison to make it all right, and so I got a quitclaim from Mr. Jenison.

Q. Now, what did you do about it? Did you see Mr. Jenison or did your brother, Edwin A. McIntire, see him?

A. I authorized my brother, Edwin A. McIntire, to see him. Mr. Jenison had to send out to Minnesota to get his wife's signature to the quitclaim.

Q. And you paid him how much for it?

A. One hundred dollars.

Q. To whom did you pay that money?

A. I paid it to my brother, Edwin A. McIntire, in cash to pay to Mr. Jenison.

* * * * * * *

213 Q. Now, look at that paper and state whether that is the quitclaim which you got from Mr. Jenison and of which you have been speaking.

A. Yes, sir; that is it.

Q. You see that there is attached to the paper a check of your brother, Edwin A. McIntire, for one hundred dollars and payable to H. Jenison. How do you account for that?

A. Well, he paid it. I gave him the money and it went through the bank and came back to him.

Q. You gave him the money and he gave his own check for it?

A. Yes, sir.

Mr. HENKLE: I here give that paper with said check attached thereto in evidence.

(NOTE.—And the same are herewith filed in evidence and marked Exhibit A. H. No. 17.)

Q. Now, Miss McIntire, you say that after you got the F-street property you built some houses. How many houses did you build on it?

A. Four houses.

Q. Where were they?

A. Two of them on F street and two on the alley back.

Q. Who were your builders?

A. Messrs. Medford and Waldron.

214 Q. Were they carpenters?

A. Yes, sir; they were carpenters.

Q. Was your contract with them in writing or verbal?

A. It was in writing.

Q. Will you look at that paper and state whether or not that is the contract?

A. Yes, sir; that is it.

Q. Is that your signature to it?

A. Yes, sir.

Q. Well, is that the signature of Medford and Waldron, or do you know? Did you see them sign it?

A. I cannot say that I saw them sign it.
Q. And that is your signature?
A. Yes, sir.
Q. And that is the contract which you signed?
A. Yes, sir.
Q. What were you to pay for those houses?
A. Thirty-three hundred dollars, but they actually cost more than that after paying for the party walls and the sewers and all the fixings up.
Q. How much did they cost in fact?
Q. Somewhere about four thousand dollars.
Q. Well, did you pay it all?
A. Yes, sir; I paid it all.
Q. Well, was it the money of Edwin A. McIntire?
A. No, sir; it was my own money.
Q. Did he have any interest in it?
A. No, sir; he had no interest at all except that he was my brother and he wanted to see things done right for my sake;
215 that was all.
Q. But the money was entirely yours?
A. Yes, sir; it was all my own money.

Mr. HENKLE: I here give that contract in evidence, and will hereafter prove the signature of Medford and Waldron thereto.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 18.)

Q. What did you do with these houses after they were completed?
A. I rented them.
Q. Well, have they been ever since rented?
A. Yes, sir; only when a tenant would move out.
Q. Who has received the rents?
A. I have received the rents.
Q. Who has been your agent?
A. My brother, Edwin A. McIntire.
Q. Has he collected the rents for you?
A. Yes, sir; he has collected the rents for me. I go down to his office every month, and I look over his books, and if things satisfy me he settles with me.
Q. Have you allowed him any part of the rents except his commissions?
A. No, sir.
Q. I want to know if you had the houses insured after they were finished.
A. Yes, sir; they were insured.

Q. For how much?
A. It tells on the insurance papers. I do not remember.
216 Q. Twenty-four hundred dollars?
A. Somewhere about that.
Q. Will you look at that paper and state what it is?

A. This is the insurance for the four little houses.
Q. That is your policy of insurance?
A. Yes, sir; for the four little houses on F street.

Mr. HENKLE: I here give in evidence that policy of insurance.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 19.)

Q. What did you have personally to do with the building of those houses?
A. I went there and looked at them; otherwise they would not have been done right.
Q. Did you give directions?
A. Yes; some. I did not give much. I trusted it to my brother, Edwin A. McIntire. I gave some directions where things did not please me, and I spoke to Mr. Medford, I think it was, about them.
Q. You have a niece, Mrs. Laura Galliher, have you not?
A. Yes, sir.
Q. Mrs. Laura Galliher has testified in this case for the complainant, and she has said that you inherited no money, and that she did not think you had means enough to buy these properties. What have you to say about that?
A. I say that she does not tell the truth, and that she knows nothing about it.

Q. Will you be kind enough to tell us where and when
217 you kept bank accounts years ago?

A. I had a bank account in Philadelphia when I lived there; I think the 4th National bank; I know it was a national bank.
Q. Do you know the name of the cashier?
A. Yes, sir; Mr. Theodore De Bow.
Q. I guess you are mistaken about the bank, are you not?
A. Well, it may have been the 3rd National bank.
Q. Was it not the Central National bank?
A. Well, it was near the corner of 3rd and Chestnut streets or 4th and Chestnut streets; but I know the name of the cashier of the bank.
Q. And the name of the cashier of the bank is De Bow?
A. Yes, sir.
Q. How long did you know him?
A. Oh, I have known him for over—a good many years, a good many years; I guess twenty-odd years or more; I know he was quite a young man when I first knew him, and I guess he is a middle-aged man now.
Q. State whether or not you had money in the bank of which he was cashier in the years 1881 and 1882.
A. Yes; I cannot remember the exact year, but it was in 1879, 1880, or 1881; about in that neighborhood.
Q. I want to ask you if since this suit was begun and your title sought to be impeached and your responsibility questioned you made application to him for a statement as to your bank account in his bank.

A. Yes, sir; I wrote him a note to that effect.

Q. Will you look at that paper and state whether or not that is his reply?

218 A. Yes, sir; that is his reply.

Q. Do you know that Mr. De Bow is the cashier of that bank?

A. Yes, sir.

Q. Well, do you know whether you had that amount of money in the bank?

A. Yes, sir; for I drew it out and spent it.

Mr. HENKLE: I here give that letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 20.)

Mr. HENKLE: If you object to it, gentlemen, I will have to take the deposition of Mr. De Bow.

Mr. MACKEY: Of course, we object to it.

Mr. HENKLE: What is your objection?

Mr. MACKEY: That there is no proof that the letter was written by him, and, if written by him, that it is second-hand testimony, and is *res inter alios acta*.

Q. Now, Miss McIntire, you say that you came here to live in 1866?

A. Not to stay. I came here in 1866, but I did not stay all that time; I came here and went back again. I had brothers living here.

Q. When did you come to live here?

A. We brought our furniture here in 1882.

Q. And you drew that money out of the bank when you came here?

A. I think I drew it all out after I came here.

219 Q. Well, had you an account with any of the banks in Washington?

A. No, sir; I did not have any account here, but I sent money on to my two brothers at different times and they had money in the bank for me.

Q. Who were your two brothers?

A. Henry McIntire and this brother, Edwin A. McIntire.

Q. Is your brother Henry McIntire living?

A. No, sir.

Q. When did he die?

A. In November, 1879.

Q. You say that you used to send from Philadelphia to your two brothers here money; for what purpose?

A. To invest it for me.

Q. Do you know where they kept your account?

A. They kept the money in the German-American bank, at the corner of 7th and F streets northwest, in this city.

Q. Did they keep it in any other of the banks?

A. I guess they did not keep it in any other of the banks. I guess they kept it all there.

Q. Do you know how much money you sent them from time to time?

WITNESS: Do you mean each time?

Mr. HENKLE: No; altogether.

A. I do not know; several thousand dollars; they had several thousand dollars of mine in that bank.

Q. Was that before you came here to live?

220 A. Yes, sir.

Q. Did that include this money you had in the bank in Philadelphia?

A. Oh, no; that was different.

Q. Your brothers had this money of yours in the bank here as trustees?

A. Yes, sir.

Q. Do you know how your brothers were in the habit of investing your money?

A. In notes and deeds of trust principally.

Q. Now, I want to know if you purchased other real estate as you did this from Emma Taylor?

A. Yes, sir; three or four other properties I bought from Emma Taylor.

Q. Well, did you buy from other people besides?

A. Yes, sir; and from other people, too.

Q. And through whom were all those transactions made?

A. All my real-estate transactions were made through my brother Edwin A. McIntire.

Q. Since the death of your brother Henry McIntire, has your brother Edwin A. McIntire been your sole agent?

A. Since my brother Henry died my brother Edwin A. McIntire has been my agent all through.

Q. You have a sister named Emma T. McIntire, have you not?

A. Yes, sir.

Q. Mrs. Laura Galliher in her testimony said that you had a sister named Emma T. McIntire, and that the letter "T" in her name stood for Taylor. Will you be kind enough to state how that is?

221 A. Her name is Emma T. McIntire. The letter "T" does not really belong to her name. There were several Emma McIntires in the family. There was one here named Emma V. McIntire, and three, I think, in Philadelphia named Emma McIntire; and at one time one of the other Emma McIntires got one of her letters and it made her feel ugly about it and she put the middle letter "T" in her name, as her father used to call her "Tinty Ush" or "Totts." Her name was plain Emma McIntire until she put the letter T in her name, and Laura Galliher knows all about that.

Q. Well, how do you account for Mrs. Laura Galliher stating that the letter T in Emma T. McIntire's name standing for Emma Taylor?

A. I do not know. That is one of her untruths. Since Uncle

David's death she has told nothing but untruths about us, and I do not know why she is so ugly towards us.

Adjourned to July 19, 1892.

* * * * * * *

MARTHA MCINTIRE, who further deposes and says, being
222 recalled for cross-examination:

By Mr. MACKEY:

Q. You are a native of Philadelphia, Pennsylvania?

A. Yes, sir.

Q. When were you born there?

WITNESS: Is it necessary for me to tell that? I am of lawful age.

Mr. MACKEY: I know, of course, that it is not generally a proper thing to ask such a question of a lady, but this is a case in which it becomes necessary—in which I should ask your age.

WITNESS: Need I answer that question, Gen. Henkle? I am of lawful age. I am not a little girl. I am older than Laura Galliher's father. I think that is enough.

Mr. MACKEY: I would like to know your age.

Mr. HENKLE: I think I would answer it, Miss McIntire.

WITNESS: I do not think it is a fair question or a gentlemanly question.

Mr. HENKLE: I think I would answer it, Miss McIntire. It cannot do any harm.

Mr. MACKEY: It is a question that I am bound to ask in this case.

A. I was born in 1834. Now you have my age.

Q. Have you lived anywhere else besides in Philadelphia and Washington?

223 A. No, sir—that is, not a permanent residence in any other places.

Q. Did you live in Philadelphia until you came to live in Washington?

A. Well, I have stayed in other places, but not to make my home in other places. I never had any other home than in Philadelphia and Washington.

Q. When did you first come to Washington?

A. In 1866.

Q. Did you come here to live permanently then in 1866?

A. No, sir; I did not come here to live permanently then, but just for awhile.

Q. How long did you live here in 1866?

A. I do not remember. It was some months that I stayed here then, but I do not remember the time.

Q. Do you remember whether it was in the fall or in the spring when you came to Washington then?

A. It was cold weather when I came here then.

Q. Was it in the early part or the latter part of the year?

A. I think it was in the latter part of the year. I really forget. It was either Christmas of 1865 or else the beginning of 1866.

Q. Then you stayed here a few months?
A. Yes, sir.
Q. And you went back to Philadelphia?
A. Yes, sir.
Q. When did you come here again?
A. I cannot remember exactly. I had been here off and on.
224 Q. You came here off and on on shorter visits until when?
A. Until we moved here.
Q. When did you move here?
A. In 1882.
Q. You say that we moved here. Whom do you mean by "we"?
A. My mother and two sisters.
Q. What two sisters?
A. Emma T. McIntire and Addie McIntire.
Q. Is Emma older or younger than you?
A. Younger.
Q. What time in 1882 was it that you came here?
A. On the 15th of June, 1882.
Q. When you were in Philadelphia did you keep house yourself or did you live with your family?
A. I always lived at home with my father and mother as long as my father lived.
Q. Did you have any occupation?
A. Part of the time.
Q. What do you mean by part of the time?
A. Part of the time I was at home taking care of the house for them and part of the time at my occupation.
Q. What occupation?
A. Book-work.
Q. Book stitching?
A. Book sewing, and part of the time I was in the real-estate business—that is, I sold some houses and rented some houses. I had some to rent and some to sell.
Q. You mean for other people?
A. Yes, sir.
Q. How long were you engaged in the book business?
225 A. I do not remember how long.
Q. Well, give us an idea. Was it five or ten years?
A. I expect so. If I had known that you were going to ask me these questions I would have looked it up.
Q. Give us an idea. Was it five years or was it ten years?
A. Well, say ten years. I do not know how right that is.
Q. Do you think it is over or under the mark?
A. I cannot tell; but that will do, I suppose.
Q. What could you earn at book stitching?
A. Whatever wages I made; sometimes more and sometimes less.
Q. Well, give us an average.
A. I cannot tell you. I never made two weeks alike.
Q. Can you not give us an average?
A. Well, say ten dollars a week.

Q. Did you ever make more than $10 a week?
A. Yes, sir; I have made more than $10 a week.
Q. Often?
A. Oh, well, I do not know how often. I never made two weeks exactly alike; it was according to what kind of work they had and how long I worked.
Q. You made oftener less than $10 a week than you made over $10 a week, did you not?
A. I do not know; I cannot tell exactly.
Q. When did you engage in this real-estate business?
A. While living in Philadelphia. I do not know what year exactly; I cannot remember what year.
Q. How long was it before you came here?
A. It was some time before I came here.
226 Q. How long were you engaged in that business?
A. I was for several years in the business.
Q. Selling houses for other people?
A. Yes, sir.
Q. You mean that you got commissions for selling them?
A. Well, I got pay for it. I suppose you call it commission.
Q. Give us the name of three or four people for whom you sold houses.
A. Well, I sold a house for Mr. Edwin T. McIntire.
Q. What did that bring you—how much? Did you make anything on it?
A. I do not remember.
Q. Well, fifty dollars?
A. I made over fifty dollars. I made one hundred dollars, anyhow. He gave me that much, anyhow.
Q. You do not know how much it was?
A. I cannot remember what the house sold for.
Q. Did you sell for anybody else?
A. Yes, sir; I sold some other houses. Well, I sold some for my brother here, Mr. Edwin A. McIntire, after he came on here.
Q. You sold some houses for him in Philadelphia?
A. Yes, sir.
Q. Some houses that he had there?
A. Yes, sir. I sold some for other people, too.
Q. What other people?
A. I cannot remember everything.
Q. Can you not give us some name outside of your own family?
A. Well, Mr. Smith.
227 Q. Well, there are so many Mr. Smiths; can you not give us his first name?
A. I think Jacob was his first name. I have not seen him for a good many years and I do not know whether he is living or not.
Q. Well, you sold houses for him?
A. Yes, sir.
Q. What did you make in that transaction?
A. I did not make quite as much in that transaction.
Q. Did you sell for anybody else?

A. I guess that is about all. I had five or six houses to sell.

Q. You say that you received commissions for renting houses. Whose houses did you rent?

A. I rented some of the houses which I afterwards sold.

Q. How did you get your pay for renting those houses?

A. I took the pay out of the rent.

Q. You took your commission out of the rent?

A. Yes, sir.

Q. Did you collect the rent?

A. I did.

Q. For whom did you collect rent?

A. For Mr. McIntire, of whom I have spoken, and for this gentleman here, Mr. Edwin A. McIntire, my brother.

Q. What is the name of the other Mr. McIntire?

A. Edwin T. McIntire.

Q. Who is Edwin T. McIntire?

A. My father.

Q. Those were the only persons you collected rent for?

228 A. Yes, sir.

Q. When you were living in Philadelphia with your family did you pay board?

A. No, sir; I did not pay any board.

Q. Not when you were making $10 a week?

A. No, sir; I did not pay any board. I was favored; I have been favored all through, and that is the way I got a little ahead.

Q. How much money do you suppose you saved in 1882?

A. I do not remember.

Q. Can you not give us an idea?

A. No, sir.

Q. Did you save one thousand dollars?

A. Certainly I saved one thousand dollars. I would have been a poor one if I did not.

Q. Did you save $1,500.00 or $2,000.00 or $2,500.00?

A. I do not remember.

Q. Can you not tell how much money you had when you came from Philadelphia to Washington in 1882?

A. I could not tell if I was to die for it.

Q. Can you not tell whether you had one thousand dollars or fifty thousand dollars?

A. I know that I did not have fifty thousand dollars.

Q. Well, did you have one thousand dollars?

A. Yes, sir.

Q. Did you have two thousand dollars?

A. Yes, sir; I had money in the bank.

Q. How much more than two thousand dollars did you have?

229 A. I do not remember.

Q. Well, did you bring your money on with you from Philadelphia?

A. No, sir; I had been sending it on before that.

Q. So that when you came here from Philadelphia you had sent all your money on here?

A. No, sir; I did not say that. I still had some. I had been sending some on here, but I still had some there.

Q. You do remember how much you had there?

A. No, sir.

Q. How much did you have here?

A. I do not remember exactly.

Q. Do you remember how much you had in both places?

A. No, sir; I know I had several thousand dollars.

Q. You probably had two or three thousand dollars?

A. I probably had two or three times that. If I had known that you were going to ask me these questions I would have had the papers prepared.

Q. You do not know just how much you had?

A. No, sir.

Q. How did you accumulate your money in Philadelphia?

A. Why, my father gave me some. He gave me several thousand dollars. He gave me money at different times, and then when I was at home and helping about keeping the house I was paid for that, and I did not pay any board, and then when I had a little start I sent money first to my older brother, and he invested it for me up to the time of his death, and then after his death my brother here, Edwin A. McIntire, invested it for me. We got big interest
230 for it. I suppose it was good luck and by just turning it over and over for a number of years it accumulated that way, and then I lived economically all the time.

Q. When you got money together you sent it on to your brother here?

A. Yes, sir; from time to time.

Q. To your brother, Edwin A. McIntire?

A. Yes, sir; and to my other brother, too.

Q. Your other brother was named Henry?

A. Henry McIntire.

Q. Have you any old letters of his acknowledging the receipt of any money from him?

A. I do not remember. When we moved here we destroyed so many things so as not to have luggage.

Q. Do you think you could find any?

A. I do not know whether I could or not. I have some letters which were kept just to preserve his writing. I do not know whether I have any business letters.

Q. Did you ever keep any account of the amount of moneys you sent to them?

A. Just a sort of memorandum—that is about all.

Q. What do you mean by a memorandum—in a book?

A. No, sir; on a piece of paper.

Q. Did you save your money until you got a sum large enough to send and deposit it in bank?

A. They put it in bank down here.

Q. Who did?

A. My brothers deposited it in the German-American bank here.

231 Q. How much would you send them at a time?

A. Fifty dollars or a hundred dollars or two hundred dollars; something like that.

Q. When you got fifty dollars you would send that sum of fifty dollars or a hundred dollars or two hundred dollars together?

A. Yes, sir.

Q. Where did you keep it in Philadelphia; under your pillow or deposited in bank?

A. For a little while in a savings fund, until I had an account in a bank there; they paid small interest.

Q. What savings fund?

A. The Philadelphia savings fund.

Q. That place at the corner of Walnut and 4th streets?

A. Seventh and Walnut streets.

Q. That great granite building there?

A. Yes, sir; opposite that park.

Q. Opposite Washington square?

A. Yes, sir; in old Philadelphia.

Q. You say that you had an account there?

A. Yes, sir; I had money there.

Q. When did you have money there?

A. Off and on along. You can put in small amounts there, and I put in a little from time to time—that is, when I did not want to keep it in the house.

Q. What was the highest sum you ever had there?

A. I think when I drew it out—all of it out, I think, about six years ago—I drew out between three thousand and four thou-

232 sand—that is, just little driblets that I put in; that was the last of it and I closed up the account then.

Q. Then what did you do with the amount that you drew out?

A. I invested that down here in Washington. I was living here in Washington when I drew that out. I went up there to get it about six years ago.

Q. Was that a bank that you kept your money in?

A. It was not a bank; it was only a savings-fund institution.

Q. You drew three or four thousand dollars that you had in that bank or institution. Did you have money in any other bank?

A. Yes, sir; in the Central National Bank of Philadelphia.

Q. How did you deposit your money in that bank—as you got it, one hundred dollars at the time or two hundred dollars, or how?

A. I put larger sums in the bank.

Q. How did you deposit there?

A. When I got fifty dollars or seventy-five dollars or one hundred dollars, or whatever it happened to be, I then took it there and put it in.

Q. How long were you depositing in that bank?

A. I do not remember how long; not a very great while, but I do not remember how long it was.

Q. You say that you deposited altogether how much in the Central National bank?

A. I did not say how much. I got a letter from there which has been put in evidence here and I guess that will tell; I think it was about six thousand dollars or sixty-eight hundred dollars.

233 Q. You had three or four thousand dollars in the savings bank and you say that none of that went into the bank?

A. No, sir.

Q. Then you put six thousand dollars, you say, into this Central National bank?

A. Yes, sir.

Q. How did you get that much money to put in that bank?

A. Why, it accumulated from time to time when I got any money on account.

Q. And you just put it in there?

A. My father two or three different times gave me one thousand dollars.

Q. You mean one thousand dollars each time?

A. Yes, sir.

Q. You would put that in the bank as you got it?

A. Well, I do not know really whether I did or not. I put it in there for safe keeping, as I did not want to keep it in the house.

Q. When your father gave you one thousand dollars you would deposit it in the bank?

A. Yes, sir; I suppose so. I did not want the money in the house and I put it in the bank.

Q. And that bank was the Central National bank?

A. Yes, sir.

Q. And that is the way you got your money to put there. You never had any dealings with any other bank?

A. No, sir.

Q. Only with the Central National bank and the Philadelphia savings fund?

234 A. Yes, sir.

Q. How many deposits did you make in the Central National bank?

A. I do not know.

Q. Did you make fifty?

A. I do not remember.

Q. Give us an idea—tell us whether you made one deposit or whether you made fifty deposits.

A. I made several deposits.

Q. Did you make twenty-five deposits?

A. I cannot remember.

Q. Can you not remember whether you made ten deposits?

A. I suppose I made more than ten deposits.

Q. Well, now, you came on to Washington city what time in 1882?

A. On June 15, 1882.

Q. Did you make any investments shortly after you came here, then?

A. Yes, sir; I bought some property shortly after I came here then.

Q. How long after you came here?

A. I do not remember.

Q. How long after you came here was it before you drew your money out of the bank in Philadelphia?

A. I do not remember.

Q. Well, you drew it out all at once?

A. Yes, sir; after I came here I drew it all out at once.

Q. When you drew it all out at once what did you do with it after it came here?

235 A. Oh, I think I bought some notes with it.

Q. You did not buy notes with it instanter—as soon as it come here; you kept it for awhile, did you not?

A. Well, I did not draw it out until I wanted it.

Q. Then you drew it all out in one sum. Now, I ask you when you did that what did you do with the sum that you drew out?

A. I invested it in notes.

Q. Whose notes?

A. I do not know. I had several of Partello's notes, some of Robert's notes, but really I do not remember what different notes I have had.

Q. Did you make it one investment?

A. No; not in one investment; I bought different notes.

Q. At different times?

A. Well, pretty much about the same time.

Q. Running over a month or two?

A. I cannot remember.

Q. Running over two months? I mean the time in which it took you to invest this money.

A. I do not know; I had everything ready before I sent for the money.

Q. Well, this money which you say you drew out amounted to $6,000 or $6,800?

A. Yes, sir.

Q. What I want to get at is when you parted with that money when you got here to Washington. You say that you invested it in notes. Will you be kind enough to give me the name of somebody that you loaned it to?

236 A. I loaned some of it to Partello. I had some of his notes.

Q. How much did you have in Partello's notes?

A. I think I had five thousand dollars in one of his notes, and I think I had one of his notes amounting to twenty-five hundred dollars.

Q. That is seventy-five hundred dollars?

A. Yes, sir; I had three of his notes on the P-street property.

Q. At different times?

A. All pretty much about the same time.

Q. What do you mean by "all pretty much about the same time"?

A. Nearly all about the same time; the same week, then.

Q. Where did you keep your money that you invested——

Mr. HENKLE (interposing): You had three notes, you say. How much was the other one?

WITNESS: I think I had two for $2,500.00 each and one for $5,000.00. I had the Roberts notes, too.

Q. Were those separate sums you loaned him at different times, making ten thousand dollars that you loaned him altogether at one time?

A. I loaned it to him at different times.

Q. That is, you loaned him twenty-five hundred dollars at one time and before he paid you back that amount you would give him another sum?

A. No, sir.

Q. You say at one time he had from you as much as $10,000.00?

A. Yes, sir; on those houses.

Q. That is, at one time Partello owed you as much as ten
237 thousand dollars?

A. Yes, sir.

Q. Where did you keep your money that you were investing in these notes before you bought the notes? You did not carry it around in your dress, did you?

A. I told you that I drew it from the bank in Philadelphia when I wanted it.

Q. Did you carry that around in your dress pocket for awhile prior to buying those notes?

A. After I got it I put it in my brother's safe (pointing to the defendant Edwin A. McIntire) for a day or so.

Q. Did you ever deposit any money yourself in any bank in Washington?

A. No, sir.

Q. And the only two banks you ever had any money deposited in were the Central National Bank of Philadelphia and the Philadelphia Savings Fund bank?

A. Yes, sir.

Q. Were those notes secured by deeds of trust?

A. Yes, sir.

Q. Were the notes made directly to you?

A. Yes, sir; I think they were.

Q. And the deeds of trust to secure them made to you?

A. Yes, sir.

Q. When was it that you loaned ten thousand dollars to Partello?

A. I cannot tell you the year.

Q. Shortly after you came here?

A. Yes, sir; not long after we came here.

238 Q. You got some money from Philadelphia with which to buy ten thousand dollars' worth of notes?

A. Yes, sir.

Q. Where did you get the other money?

WITNESS: What other money do you mean?

Mr. MACKEY: I mean the other money with which to loan Mr. Partello the ten thousand dollars. You only got $6,000 or $6,8000.00, you say, from the Central National Bank of Philadelphia.

WITNESS: I know that.

A. I sent money on at different times to my brothers to invest for me, and they were invested at different times for me.

Q. You have no letters or any receipts from your brothers or anything to show for this money which you sent on to them?

A. I do not know whether I have or not.

Q. You have no letters acknowledging the receipt of money sent to them?

A. I have had, but I thought after the transaction was all over that they were of no account.

Q. When you wanted to get money from your brothers, which they had invested for you, as you say, how would you get it? Would they pay it to you by check or how?

WITNESS: Do you mean in Philadelphia or here?

Mr. MACKEY: No; here.

A. Sometimes they would pay me by check and sometimes cash the checks. I would get it cashed as long as I had no money
239 in bank.

Q. These notes that you bought would run one or two years, would they not?

A. Yes, sir; and sometimes longer.

Q. How much did you have out invested in that way here in Washington in 1882?

A. I do not remember at all.

Q. You cannot tell whether it was fifteen thousand dollars or twenty thousand dollars?

A. I cannot remember how much it was.

Q. Would you not know whether it was twenty thousand dollars or five thousand dollars?

A. I do not suppose it was twenty thousand dollars at that time.

Q. Do you suppose that you had twenty thousand dollars invested at any time?

WITNESS: In notes?

Mr. MACKEY: In notes.

A. I do not suppose I had twenty thousand dollars in notes at that time.

Q. What else did you have it invested in—how much in notes and how much in real estate?

A. Really I cannot tell you at all. I do not remember the different years that I bought these notes and real estate.

Q. You know when you came here. About the time you came here how much real estate did you have in Washington?

A. I had not very many houses then. Some of these notes were paid off.

240 Q. Well, did you have one house or did you have a dozen houses?

A. I cannot remember how many I had.

Q. Can you not tell whether you had one house or a dozen houses?

A. I know that I did not have a dozen houses at that time.

Q. Did you have one house?

A. Yes, sir.

Q. What house was that?

A. I forget which house I bought first. None of them are worth very much.

Q. Which house did you buy first or second?

A. I cannot recall that to my mind.

Q. Can you not call to mind any house that you owned when you came from Philadelphia to Washington within a year after that?

A. Well, I will have to look up the papers to tell you. I cannot remember things of that kind, for I have had my mind on so many things during those years. I know that I had some houses, but I cannot remember where they were at that particular time. I know, however, what houses I have now.

Q. Did you buy any houses in Washington before you came here?

WITNESS: While I was in Philadelphia?

Mr. MACKEY: Yes; any houses, lands, or lots in Washington.

A. This lot on F street, I think I bought that in 1881. The papers will tell. I think I bought that in 1881.

241 Mr. HENKLE: You mean the Pryor property in controversy here?

WITNESS: Yes.

Q. I want to make sure about the dates. I am asking you about the time when you came here to live permanently, when you came here with your family, and I now ask you whether you bought any property in Washington prior to coming here then.

A. If I did I do not think it was more than one house.

Q. From whom did you buy that house?

A. My brother, Edwin A. McIntire, was my agent; I did not go arouud about these things, but I entrusted them to him, and that is the reason I do not know so much about them.

Q. You think you bought one house from whom?

A. I say that I entrusted all that to him, and therefore I do not remember; I entrusted all these investments to him.

Q. Did you ever buy a house from your brother, Edwin A. McIntire?

A. No, sir.

Q. After you came to Washington do you remember how many properties you bought?

A. No, sir; I do not; eight or nine houses I think there were.

Q. What was the first house you bought?

A. I bought several about the same time.

Q. From whom?

A. I cannot tell you from whom I bought the different ones; the deeds will tell you all about that.

Q. But I am trying to test your memory. Cannot you remember about that?

242 A. Well, you go most too far, as my memory is not very good on some things.

Q. Did you buy a piece of property after you came here from Emma Taylor?

WITNESS: Emma Taylor?

Mr. MACKEY: Yes.

WITNESS: You mean the F street and the 21st and I street properties?

Mr. MACKEY: Yes.

A. I bought those two pieces of property from Emma Taylor.

Q. Did you buy any other property from Emma Taylor besides that?

A. Yes, sir.

Q. What other property did you buy?

WITNESS: I have a memorandum here——

Mr. MACKEY: I do not care for you to look at any memorandum; I want to know this from your memory.

A. I know that I bought several houses.

Mr. HENKLE: Just say, Miss McIntire, that you have a memorandum which, if you are permitted to look at it, will refresh your memory.

WITNESS: I have a memorandum here with me which, if I am allowed to look at it, will refresh my memory on these things.

Mr. MACKEY: I do not care for that.

243 Q. How much money did you pay Emma Taylor for the property at the corner of 21st and I streets?

A. I paid twenty-five hundred dollars for the two properties: that near the corner of 21st and I streets, and that on F street.

Q. How much did you pay for the 21st and I street house, and how much for the F-street property?

A. They were both bunched together.

Q. When you bought it did you not put some value on the two houses?

A. No, sir. I paid so much for the two houses and I did not divide them.

Q. Well, how did you proportion the values of the two properties?

A. I did not proportion them at all; I paid twenty-five hundred dollars for the two houses.

Q. In cash?

A. I gave the money to my brother, Edwin A. McIntire, and he paid for them. I do not know whether it was in cash or by check.

Q. How did you give the money to your brother, in notes or by check?

A. I gave him the cash.

Q. You gave him the twenty-five hundred dollars in cash?

A. Yes, sir.

Q. Where did you get that twenty-five hundred dollars to give him?

A. It was my own money that I had received from time to time, as I told you before, as you will remember.

244 Q. Where had you been keeping that money before you gave it to your brother?

A. I had a box in the safe deposit company for a long time. I kept money in there for some time.

Q. You kept this money in a box in the safe deposit company?

A. Yes, sir; that is where I kept the money.

Q. Did you keep this twenty-five hundred dollars there?

A. I do not know whether I kept that particular twenty-five hundred dollars there or not, but I have kept money there, and with my sister, who had an account with the bank.

Q. I asked you whether you kept that particular twenty-five hundred dollars there.

A. My sister has an account in bank, and I give her my money to take down and put in her bank. I did not want the trouble of going in and out of the house, as I sprained my ankle some time ago, and I tried to save myself all I can.

Q. Well, now, I am much obliged to you for this information in regard to your sister, but I want to know where you got this twenty-five hundred dollars in cash which you handed your brother, Edwin A. McIntire, to pay for those two houses.

A. I cannot remember. It may be that he had it in bank.

Q. But you have just said that you paid it to him in cash, did you not?

A. Well, if he had money in bank for me, of course I could tell him to take it out and pay the cash.

Q. All your money, then, was kept in his bank, was it?

A. Yes, sir; as trustee for me.

Q. He kept it as trustee for you?

A. Yes, sir.

245 Q. Was that the way the bank account was kept?

A. Yes, sir; the account was kept by Mr. Edwin A. McIntire as trustee.

Q. Was it kept in that way as trustee?

A. That is the way I always understood it.

Q. You would give him money to put in bank in that way?

A. Yes, sir; and to my sister—both of them.

Q. Which sister; Emma T. McIntire?

A. Emma T. McIntire.

Q. Did your sister keep it with her own or as trustee?

A. I suppose with her own. I did not bother myself about that.

Q. Did she have a bank account?

A. She had a bank account, and I put my money in her bank account.

Q. Did you draw that twenty-five hundred dollars out of her bank?

A. I do not remember where I got it from at that particular time.

Q. But you can remember that you paid it in cash?

A. I know that I paid it in cash; I had no bank account and gave no check.

Q. Did you pay it in lump?

A. Yes, sir; of course I paid it in lump and not in driblets.

Q. Did you pay it to him at his house or at his office?

A. It may be that my sister took it to him. She had a good deal of business with him in that way. We had sickness and
246 death in our family and such things at different times, and I cannot remember so many little things.

Q. Did you ever buy any property from Emma Taylor before you came to Washington?

A. No, sir; I think they were all bought afterwards. The deeds will tell when I bought them. I think they were all bought afterwards.

Q. I know the deeds will tell; but I ask you if you remember.

A. I do not remember; I think I bought them afterwards.

Q. Do you remember ever buying a piece of property from Barbara Brown and Emma Taylor in 1881?

A. Yes, sir; I bought property from a party by the name of Barbara Brown. Let me look at my memorandum and then I can tell——

Mr. MACKEY (interposing): Hold on. I will give you the deed.

Q. Here is the deed dated April 25, 1881, which is "Exhibit A. H. No. 1" in the case of Brown *vs.* Edwin A. McIntire *et al.*, No —, and which I will make an exhibit in this case. Did you buy that property from Barbara Brown and Emma Taylor?

WITNESS (examining deed): Where is this property?

Mr. MACKEY: That is the property, No. 1216 I street N. E.

A. Yes, sir.

Q. Do you remember that property?

A. Yes, sir; that is an old frame house.

WITNESS (addressing Mr. E. A. McIntire): It is a frame house, I believe?

247 Mr. MACKEY: Do not ask your brother.

WITNESS: Well, he bought the place for me and he knows more about it than I do.

Q. You say that you bought that property?

A. Yes, sir.

Q. From Barbara Brown and Emma Taylor?

A. Yes, sir.

Mr. MACKEY: I wish you would not be asking and looking at your brother, Edwin A. McIntire, for confirmation of your testimony.

Q. What do you say; did you buy that property from them?

A. Yes, sir; I must have bought this property from Barbara Brown. I think she would not pay her notes off.

Q. You say that you bought that property from Barbara Brown?
A. Yes, sir.
Q. Did you not buy it from Emma Taylor?
WITNESS: Let me look at the deed again; really I do not know enough about real estate to be questioned quite so closely as this.
Mr. MACKEY: Well, look again at this deed from Barbara Brown and Emma Taylor, which I showed you a moment ago.
A. Yes, sir; they were concerned together, I reckon. I bought from both of them, I suppose.
Q. Where were you when you bought this property?
A. This deed says 1881. I thought it was after I came to Washington, but it must have been before I came to Washington that I bought this property.

248 Q. Were you in Philadelphia then?
A. I was in 1881.
Q. When you bought this property?
A. Yes, sir.
Q. Well, did you ever see this property before you bought it?
A. No, sir.
Q. Did you ever see Emma Taylor?
A. Yes, sir.
Q. Did you see her before you bought this property?
A. I do not know whether it was before or after I bought this property. I only saw her once.
Q. How much did you give for that property which you bought from Barbara Brown and Emma Taylor?
WITNESS: If you will let me look at my memorandum I probably can tell.
Mr. MACKEY: No.
Mr. HENKLE: Just say, Miss McIntire, that you have a memorandum by which you can refresh your memory, but that independent of that you cannot refresh your memory.
WITNESS: I have a memorandum by which I can refresh my memory if I am permitted to look at it, but I cannot do so without it.

(NOTE.—No answer to the last question.)

Q. You never saw Emma Taylor but once, as you say, and you do not know whether it was before or after you bought this property. Did you ever see Barbara Brown?

249 A. No, sir; I never saw Barbara Brown.
Q. Who negotiated this sale for you?
A. My brother, Edwin A. McIntire.
Q. Did he tell you that he was going to buy it for you before he bought it?
A. Yes, sir; he would not have bought it if I had not given my consent.
Q. He wrote you word, then, that he had a piece of property which he could buy from Emma Taylor and Barbara Brown for you?
A. He wrote me that he had a piece of property. I do not know

that he wrote particularly about this piece of property or the amount he was going to give for it, but he wanted to know if I would buy it.

Q. Was he in the habit of sending you the deeds after he had bought property for you?

A. Sometimes I had the deeds, and sometimes I kept them at his office, in the safe, as we did not have any fire-proof safe.

Q. Did you ever see before this deed from Barbara Brown and Emma Taylor to you which I have shown you?

A. Yes, sir.

Q. When did you have it?

A. At the time this case commenced.

Q. Did you ever see it before that?

A. Yes, sir; I had it in a box at his office. After I came to Washington I took charge of my deeds.

Q. What did you do with them?

A. I put them in the safe deposit company.

Q. What safe deposit company was it?

250 A. I had them in two different safe deposit companys.

Q. What safe deposit companies?

A. I had them first in the safe deposit company at the corner of New York avenue and 15th street, and then in the other one on Pennsylvania avenue between 9th and 10th streets.

Q. And that is where you were keeping your money, in the safe deposit company, when you bought the Prior property?

A. That is where I was keeping money when I did not want to use it. I kept some money there.

Q. You had four or five places in which you kept your money—that is, you had money in the safe deposit company at the corner of New York avenue and 15th streets, you also had some in the safe deposit company on Pennsylvania avenue, and you gave money to your brother, Edwin A. McIntire, to put in bank for you, and you gave money to your sister to put in bank for you?

A. Yes, sir.

Q. How often would you give your sister, Emma T. McIntire, money to keep for you in bank?

A. Whenever I happened to have it.

Q. I asked you how often?

A. I cannot tell.

Q. About how often?

A. I do not remember.

Q. A dozen times?

WITNESS: Altogether?

Mr. MACKEY: Yes.

A. I gave money to her for that purpose nearly a hundred times.

Q. You have given her money to put in bank for you

251 nearly a hundred times?

A. I should judge so.

Q. In large or small sums?

A. Sometimes in sums larger than others; just as I happened to have it—sometimes more and sometimes less.

Q. Was it twenty dollars or five hundred dollars at a time?

A. Just as I happened to have it; if any of the loans I made were paid off I would have more money, but if they were not paid off I did not have so much.

Q. And then you would give her as high as one thousand dollars or two thousand dollars to deposit in her bank for you?

A. I never cared about giving her one thousand dollars at one time often.

Q. How many times did you ever give her one thousand dollars at one time?

A. I do not remember.

Q. Can you not remember whether you gave it to her once or a half a dozen times?

A. I cannot remember.

Q. Well, you certainly know that you did give her more than one thousand dollars more than once, do you not?

A. I have given her that much at one time, but I do not know how many times.

Q. You are certain that you did give her one thousand dollars to deposit at one time?

A. Yes, sir.

Q. Have you done that more than once?

A. I cannot remember.

Q. Have you given her five hundred dollars on several
252 occasions for that purpose?

A. Yes, sir.

Q. Have you ever given your brother, Edwin A. McIntire, any money to deposit for you in large sums?

A. Well, I have not given him very large sums since I have been living in Washington to deposit for me. I would rather give it to my sister, because she is at home with me and handier.

Q. Since you have been in Washington you have not given your brother very much money to deposit for you in bank?

A. No, sir; not very much.

Q. By very much what do you mean?

A. Well, by very much I mean three thousand dollars or four thousand dollars at one time to put in bank for me.

Q. Have you ever given him five thousand dollars or six thousand dollars at one time to put in bank for you?

A. Well, when I was in Philadelphia I had something like that in the bank.

Q. You gave that all to him to put in bank for you?

A. He took charge of it for me.

Q. What did you tell him that money was for?

A. To buy notes, when he saw fit, and property for me.

Q. You gave him six thousand and odd dollars, so much cash, and told him to buy notes for you or do whatever he pleased with it for you?

A. I gave it to him to invest for me.

Q. Did he give you any receipt or acknowledgment that he had that much money from you?

A. I had some account, a memorandum I would call it, on
253 a slip of paper of what I gave him.

Q. You did not keep it in a book?

A. No, sir; I had no book.

Q. How did you come to deposit that money which you had in Philadelphia—six thousand and odd dollars at one time in Philadelphia?

A. I sold some bonds there.

Q. So, among your other investments, you have been buying bonds?

A. Yes, sir.

Q. How many bonds did you sell?

A. One or two bonds—Pennsylvania State bonds. I do not remember how many. The time had run out and I sold them.

Q. Do you remember how many there were?

A. No, sir.

Q. Whether one or two or three or four?

A. There were several.

Q. What did they amount to each—one thousand dollars each?

A. I do not remember. I did not try to remember, because it was all right.

Q. Did you purchase those bonds yourself?

A. Well, I had my sister and my mother with me when I bought them.

Q. Did you purchase them for yourself with your own means?

A. Yes, sir; I bought them for myself, and my sister and my mother were with me.

Q. How much did you buy?

A. When all was paid off that is what they amounted to.

Q. You bought all those at one time?

A. That is what they amounted to when everything was paid off.

254 Q. That is about what you paid for them?

A. No, sir; I got the interest.

Q. Have you made anything off the sale of these bonds?

A. Certainly.

Q. How much did you make?

A. I do not remember.

Q. Do you remember making one thousand dollars off of them?

A. I did not try to remember, as I thought it was all right at the time.

Q. The deposit that you made of six thousand three hundred and nineteen dollars was a large deposit. Now, that deposit, you say, was made in consequence of the sale of bonds—Pennsylvania bonds?

A. Yes, sir.

Q. And you got that money, and you went to the bank and deposited it?

A. Yes, sir.

Q. Right from where you sold them?

A. Mr. De Bow went with me from there to the other bank and got the money.

Q. Where did you sell the bonds—to the bank?

A. They were paid off. The time had run out.

Q. Where were they paid off?

A. In one of the bank buildings on Ches-nut street. The Mr. De Bow to whom I referred is Mr. De Bow of the Central National Bank of Philadelphia.

Mr. HENKLE: You mean that the bonds became due and were paid off?

255 WITNESS: Yes, sir.

Q. And you took all that money that you got in payment of these bonds and went to the Central National Bank of Philadelphia and deposited it?

A. Yes, sir.

Q. Is that the only deposit you made there?

A. No, sir; I had other deposits there.

Q. I believe you did say that you had deposited at different times there various amounts, did you not?

A. Yes, sir; at different times; but that is all I had when I drew the money out of the bank.

Q. When did you buy those bonds?

A. I do not remember. I had them for some time.

Q. One or two or five years?

A. I do not remember.

Q. You would not swear whether you had them one year or five years or ten years?

A. No, sir; I could not swear to it.

Q. When you bought them did you buy them all at once?

A. Yes, sir; I think I bought them all at once.

Q. Where did you get the money with which you bought them?

A. Well, I think I got the money from some other bonds or something that had run out.

Q. Do you know what bonds those were?

A. I forget. I cannot remember now. I think it was some money that my father had given me.

Q. Which was the most, what your father had given you or the bonds that had run out?

A. I do not remember at all, because it has been so long ago.

256 Q. Did you have this money with which you bought these bonds, the Pennsylvania State bonds, on deposit anywhere before you bought the bonds?

A. No, sir; I do not think so; but if I had it anywhere it was just in the savings fund bank; that was all.

Q. It took about five thousand dollars—somewhere in that neighborhood, it may be a little over five thousand dollars—to buy those Pennsylvania bonds. Now, from so large an item as that you ought certainly to be able to tell us where you got the money with which you bought those bonds.

A. I do not remember at all, because I got money from time

to time, as I said before, and had it in the savings fund bank there. Sometimes we kept more money in the house than we ought to have kept.

Q. Do you mean to intimate that you had been keeping this five thousand dollars in the house?

A. I kept more than I ought to have kept in the house.

Q. Do you want us to understand that you kept this five thousand dollars in the house?

A. No, sir; I do not think I had that much in the house.

Q. Now, the long and short of it is that you cannot tell us where in the world you got this five thousand dollars with which you bought those Pennsylvania bonds?

A. Well, it was money that I had saved up and earned and that had been given to me from time to time that I bought those bonds with, and then when I sold the bonds I put the money into the Central National bank.

Q. It was money which you had saved up and earned and
257 that had been given to you from time to time?

A. Yes, sir.

Q. About how long were you accumulating this $5,000?

A. I do not remember.

Q. One or two or three years?

A. I suppose two or three years.

Q. You were two or three years accumulating this $5,000?

A. I suppose so at that time.

Q. So that in two or three years your savings amounted to five thousand dollars?

A. I do not know what they amounted to at all.

Mr. MACKEY: Well, it is important for me to know.

Mr. HENKLE: She has answered as well as any business man could have done, and much better than you or I could have done.

Q. And during the two or three years that you were accumulating this money where were you keeping it?

A. I was keeping it in different places.

Mr. HENKLE: She has not said that she accumulated it in two or three years.

Q. I asked you if you had been two or three years accumulating this five thousand dollars and you said yes, that you supposed so. I took it for granted that was the time. If it took longer than that let me know.

A. I cannot remember how long I was accumulating it at all.

Q. Would you venture upon saying that you were as long as five years accumulating it?

258 Mr. HENKLE: You need not venture upon saying anything that you do not know.

A. I would not do that.

Q. So you do not know how long you were saving it, do you, nor where you were keeping it when you were saving it?

A. I was keeping it in different places.

Q. Let us know one place.

A. One place was in the house and another place in the savings bank in Philadelphia.

Q. Any other place than the house and the savings bank?

A. I guess not.

Q. You say that you kept more in the house than you ought to have kept there. How much of that money did you keep in the house?

A. I do not remember.

Q. Well, did you keep half of it there?

A. I do not remember.

Q. Do you remember whether you ever had as much as five hundred dollars in the house at one time?

A. Yes, and over that. I remember that much. I know that I had more in the house than I ought to have had. I know that my father told me that I had more in the house than I ought to have had there.

Q. Was it as much as one thousand dollars?

A. I hope not as much as one thousand, although I had more in the house than I ought to have had.

Q. And that you kept in a safe in the house or in your trunk, I suppose. You say that you had about five hundred dollars, more or less, and probably not as much as one thousand dollars, which you kept in the house. You do not say whereabouts in the
259 house you kept that. Do you know where you kept that in the house?

WITNESS: Why so particular in knowing?

Mr. MACKEY: I want to know whereabouts in the house you kept that money—whether under your pillow or under your trunk.

WITNESS: Need I answer such a foolish question as that?

Mr. HENKLE: Just say that you do not remember, if you do not.

A. Well, I do not remember.

Q. You sold those bonds on the date you made the deposit in the bank of the money?

A. I got the money that day.

Mr. BOARMAN: The bonds fell due and matured and were redeemed?

WITNESS: Yes.

Q. Did you see the Southey and Pryor properties before you bought them?

WITNESS: Do you mean the F-street property?

Mr. MACKEY: The F-street property and the I-street property.

A. I did not see the I-street property. I saw the F-street property before I bought it.

Q. Why did you buy the Prior property from Emma Tay-
260 lor when you had already bought it from Pryor for five dollars?

A. Because when I bought from Pryor and paid him the five dollars he represented that there was only thirty dollars of taxes due

and then a deed of trust on it for four hundred and twenty-five dollars, and then, when we met to examine into it, instead of there being thirty dollars of taxes due, there were three hundred dollars of back taxes, and I gave it up and did not want it.

Q. Do you know what you paid Emma Taylor for the property?

A. Twenty-five hundred dollars for the two properties.

Q. Did you not value them separately?

A. No, sir; I bunched them together.

Q. Did you put any value on the Pryor property at all in the twenty-five hundred dollars?

A. I did not divide the money up about the properties.

Q. Did you buy it subject to taxes or clear of all taxes?

A. I think it was clear. I do not remember about that part. There is nothing against it that I remember—that is, the Pryor property.

Q. You bought it clear of all taxes?

A. I do not remember.

Q. Well, did you make a lease of that property to Pryor after he made you his deed?

A. Yes, sir; I made a lease, I think, for a year.

Q. Who collected the rents?

A. He was not there a month or two before it was found out.

Q. He was not there a month or two before you found out what?

A. Before I found out Mr. Pryor and about the back taxes.

261 Q. And then you gave it up?

A. Yes, sir.

Q. And then he never paid any more rent?

A. No, sir.

Q. Did you see Pryor yourself in this transaction, or did your brother?

A. I never saw Pryor at all.

Q. This deed was made to you by Pryor out of your presence?

A. Yes, sir; my brother, Edwin A. McIntire, had it all attended to.

Q. He had it all attended to and you do not know anything about it?

A. No, sir.

Q. Well, now, after that you bought another piece of property from Emma Taylor, did you not? According to this deed it was in May, 1884, that you bought the Southey and Pryor property; then you bought after that from Emma Taylor some more; now, do you remember what more you did buy from her?

A. Yes, sir; I bought several houses from her.

Q. Do you remember what you gave her for those houses?

A. No, sir; but I have it in my memorandum here if you will allow me to look at the memorandum.

Q. Why did you buy from Emma Taylor the Barbara Brown property when you had already bought it from her?

A. I most forget. There was something about a deed of trust. If you will let me look at my memorandum I can tell. I cannot remember everything.

Q. Do you know how many pieces of property you bought at that time from Emma Taylor?

262 A. Three or four properties.

Q. You do not know positively whether it was three or four pieces?

A. I think four, but if you will let me look at my memorandum I can tell you without guessing at it.

Mr. MACKEY: We do not want you to guess. I am only doing this to test your recollection.

Mr. HENKLE: She has told you a dozen times that she does not remember and then you persist in asking her to guess.

Q. Do you know whether this was bought in the same way, in just a lump sum and no price fixed upon any piece?

A. No, sir; so much for each property.

Q. How much for each?

A. I just told you that I do not remember, but that if you will allow me to look at my memorandum I can tell you.

Q. So that without your memorandum you do not remember now how much you paid for each single piece of that property?

A. I paid twenty-five hundred dollars for the two properties, but I do not know how much for the others.

Q. You do not know what you gave for all the other pieces of property that you bought from Emma Taylor nor how much for a single piece of them?

A. I do not remember without looking at my memorandum.

Q. Well, after you bought the Pryor property you say that you invested four thousand dollars nearly in building houses on it?

A. Yes, sir; I guess I did.

Q. Well, where did you get that four thousand dollars?

263 A. Oh, I do not know. I had money around—notes coming due—but I cannot remember everything that way. I would have to be the Almighty himself to remember everything.

Q. When you paid Waldron did you pay him in cash or by check?

A. I always paid in cash. I did not have any checks.

Q. Well, how did you pay Waldron?

A. I paid them thirty-three hundred dollars.

Q. You said that it cost you nearly four thousand dollars?

A. Yes, sir; when the party walls and everything were paid off.

Q. You gave your brother the money to pay for it?

A. Yes, sir.

Q. How did you give it to your brother, in cash?

A. In cash. As I said before, my sister had an account in the bank and in the safe deposit company, and she would draw the money out for me and I would hand it in cash to my brother.

Q. Did you pay all of this thirty-three hundred dollars in that way?

A. Yes, sir; I paid it in cash.

Q. By having your sister, Emma T. McIntire, draw the money out of the bank?

A. And what I had in the safe deposit and at home.

Q. Why were you so averse to keeping a bank account yourself in this city instead of having your sister keep a bank account for you?

A. I thought it was less trouble for me to let her keep it. I was keeping the house.

Q. You were the housekeeper?

A. Yes, sir; and I lived economically.

264 Q. Have you any data, any memoranda, any old notes, any old checks, any old bank books, or anything of that sort which will show that you had any money deposited anywhere when you had any of these financial transactions?

A. I had some; but when we moved from different places most of them were destroyed, as I thought they were of no value and did not think that anything of this kind would have happened, else I would have kept them. Quite a number were destroyed which might have been saved, and I had a lot of letters from my brother, which were destroyed, as I did not want the letters and things accumulating in my trunk.

Q. When your brother, Edwin A. McIntire, paid you money did he pay you in cash or by check?

A. Generally in cash. When he gave me a check he cashed it for me.

Q. He never drew a check to your order?

A. He would draw a check and then give me the cash for it.

Q. He paid you all the money in cash?

A. Yes, sir; without he cashed his own check at his office.

Q. He never gave you any check payable to your own order?

A. No, sir.

Q. When you purchased notes did you take the notes yourself?

WITNESS: Do you mean did I take care of the notes?

Mr. MACKEY: Yes.

A. Yes, sir.

Q. Where did you keep the notes?

A. Where I considered a safe place.

265 Q. And where was that?

WITNESS: Need I tell you where I keep all my valuables? General, need I tell him that?

Mr. HENKLE: If you can, tell him.

A. I got some in the safe deposit company.

Q. I mean where did you keep these notes that you loaned money on?

A. In the safe deposit company.

Q. You say that you only saw Emma Taylor once?

A. Yes, sir.

Q. Where did you see her?

A. In the office of my brother, Edwin A. McIntire.

Q. When was it that you saw her?

A. I do not remember.

Q. Were you introduced to her?

A. Yes, sir.

Q. Who introduced you?

A. I do not remember whether my brother or his clerk introduced me to her. I used to often stop in his office.

Q. What sort of a looking woman was she?

A. As nearly as I can remember, she was a common-sized looking woman, middle aged, and with dark hair.

Q. You mean by common sized that she was of medium, ordinary height?

A. Yes, sir; with dark hair and middle age.

Q. What age?

A. Middle age—forty or forty-five years of age, I should judge.

266 Q. Did you have any talk with her?

A. No, sir; just merely spoke to her.

Q. You did not speak about your property?

A. No, sir; I did not talk about the property.

Q. Did you ever ask your brother who Emma Taylor was?

A. No, sir; I did not talk much about it. I just thought she was the one from whom I bought the property.

Q. You only knew that she was Emma Taylor because you were told that she was Emma Taylor?

A. Yes, sir.

Q. Laura Galliher said in her testimony that her grandfather, who was your father, was named Edwin Taylor McIntire. Is that so?

A. Yes, sir.

Q. You are sure, you say, that Emma T. McIntire was not named Emma Taylor McIntire?

A. No, sir; she had not a "T" in her name.

Q. Emma T. McIntire was the daughter of Edwin Taylor McIntire?

A. Yes, sir.

Q. When was it that you did meet Emma Taylor? Do you remember the time?

A. I do not remember when I met her.

Q. Do you not remember whether it was one or two or three or four or five years ago?

A. It has been several years ago. I do not remember actually whether it was since we moved to Washington or before.

Q. Do you remember whether it was before or after you bought the properties from her?

A. I do not even remember that, because she was intro-
267 duced as a total stranger.

Q. When you were introduced to her did you not recognize her at once as the woman you bought several pieces of property from?

A. No, sir; I did not think and I did not really know whether I had bought the property from her or not. At different times I would be introduced to people there and I did not know who they were at all.

Mr. MACKEY: I think this is all I have to ask this lady, but I wish to reserve the closing of my cross-examination of her until after this testimony shall have been written out and I have read it over.

Mr. HENKLE: Very well, but in the meantime I will proceed to the redirect examination.

By Mr. HENKLE:

Q. You said a little while ago, in answer to Mr. Mackey, that your brother, Edwin A. McIntire, did not give you any checks. What do you mean by that—that he did not make out any checks in your name?

A. That he did not pay me any checks for me to collect, but cashed them for me.

Q. He made checks out to you and you endorsed the checks and then he cashed them?

A. Yes, sir.

Q. Do you remember whether you received money from any other members of your family than from your father and from your sister?

268 A. Yes, sir; my sister—my sister that died—two of my sisters that died. I got money from both of them.

Q. Were they single or married ladies?

A. They were both single.

Q. How did they get the money themselves?

A. They were both school teachers. They were economical and they were school teachers.

Q. How long were they teachers?

A. I do not quite remember the number of years. They were school teachers in Philadelphia.

Q. In what schools?

A. One of them was in the normal school and another in the Cherry-street school, a grammar and secondary school in Philadelphia.

Q. How much money did you get from your sisters?

A. I do not remember how much, but several thousand dollars.

Recross-examination.

By Mr. MACKEY:

Q. When did those two sisters die?

A. One sister died in 1880 and the other died since I came to Washington.

Q. What was the name of the one who died in 1880?

A. Sally J. McIntire.

Q. She died in Philadelphia?

A. Yes, sir.

Q. How old was she when she died?

A. Well, she was younger than me.

Q. Had she any means?

269 A. Well, she lived economically and had a good situation; she taught in the grammar school in Philadelphia, and she had quite a sum saved up.

Q. Did she make a will?

A. No, sir.

Q. Was any administration taken out on her estate?

A. Indeed I do not know anything about it.

Q. Who paid you this money?

A. I think mother gave it to me.

Q. Do you know how much it was?

A. I do not remember; several thousand dollars.

Q. Well, did she divide the property up among the children?

A. Just amongst the ones at home—the single ones.

Q. How many were at home?

A. They were three living after Sallie died.

Q. And each of you got several thousand dollars?

A. Yes, sir.

Q. In money?

A. Money and bonds together. Most of us turned it into money.

Q. You do not know whether your mother gave it to you or not?

A. It was my sister's estate; mother had a right to it, but mother handed it over to us.

Q. You do not know whether your mother administered the estate or whether there was any administrator?

A. I do not remember that part of it.

Q. Did this sister have her money in houses?

A. No, sir; not in houses; just so much money.

Q. Did she have a deposit in any bank?

A. She just had money and then bonds—some bonds.

270 Q. Did she have money deposited in bank anywhere?

A. No, sir; I do not think she did; I do not remember that.

Q. She just kept this money in the house?

A. Well, she put her money in the savings fund and she had some in the house when she died, and then some in bonds.

Q. Did you get any of the bonds?

A. The bonds were sold and I got my share of them.

Q. Where did your other sister die?

A. In Washington city, D. C.

Q. And what was her name?

A. Addy McIntire.

Q. Did she have any middle name?

A. No, sir.

Q. How much did you get from her estate?

A. I do not remember that, either.

Q. Did you get anything?

A. Yes, sir; I got half of what she left.

Q. Did she make a will?

A. Yes, sir.

Q. Do you know whether that will was probated and recorded?

A. I think my brother, Edwin A. McIntire, attended to all that.
Q. When did she die?
A. In 1885.

Redirect examination.

By Mr. HENKLE:

Q. Did you get as much as three thousand dollars or four
271 thousand dollars from her estate?
A. I think I did. It was divided between my other sister and me. She left it to both of us.
Q. Who paid you that money?
A. I am not certain; I think my brother, Edwin A. McIntire, was the administrator or the executor; I do not know which you call it.
Q. Did he pay you the money?
A. Yes, sir; he paid it over to us.

MARTHA McINTIRE.

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272 NOVEMBER 29, 1892.

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John Taylor.

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Direct examination.

By Mr. HENKLE:

Q. Where do you live?
A. No. 1162 5th street northeast, in this city.
Q. What is your occupation?
A. I am now a watchman at the Interior Department.
Q. How long have you been employed as a watchman in the Interior Department?
A. For four years and upwards. I was employed in the Pension Office at one time for six years and five months.
Q. As watchman there?
A. Yes.
Q. What did you do before that?
A. I was in the ice-cream business, and then I was employed at the Ebbitt house.
Q. Where did you carry on the ice-cream business?
A. I carried it on in 1876, 1877, 1878, and up to 1879, on
273 G street northwest, No. 1204; it was in a house that set back in a yard, owned by Susan Burgess, but it has been torn down now and new houses put up there since that time, but the number was then 1204.
Q. I want to know whether or not you ever knew a lady by the name of Emma Taylor in this city.

A. Yes, sir; I knew her. She used to come to my place in the evenings and buy ice cream by the box.

Q. How long back did you know her?

A. I think I had known her back to 1876; I do not think any further back than that.

Q. Was she a single or married woman?

A. I could not tell you; she never had any gentleman with her when I saw her; because when I was in business I never asked such questions as that; but she might have been married for all I know, but I do not know.

Q. What sort of a looking woman was she?

A. She was of medium height, with a kind of dark complexion; but it has been so long ago that I cannot remember.

Q. How old a woman was she at that time?

A. About twenty-four or twenty-five years old. She looked to be that old, but, of course, she might have been older or younger.

Q. Do you know Mr. Edwin A. McIntire, one of the defendants in this case and who is now present?

A. Yes, sir; I have known him for years.

Q. How long have you known him?

A. Since 1877.

274 Q. How did you get acquainted with him?

A. By looking for a house.

Q. Well, did you go to his office?

A. Yes, sir; he has given me keys of several houses to look at. I wanted to buy a house at one time from him.

Q. Have you been frequently in his office?

A. Yes, sir; I have been in his office several times, and down here in his new place once or twice.

Q. When you first visited his office where was it?

A. On F street between 9th and 10th northwest, in a little frame house on the corner of the alley there.

Q. Now torn away?

A. Yes, sir; there used to be a little double frame house there where a confectionary shop was kept at one time and a tailor shop one time at the other end.

Q. You used to go there?

A. Yes, sir; on the other side of Mr. Warner's building. The Warner building was built up where the frame was.

Q. I want to know whether or not you ever met Emma Taylor at Mr. McIntire's office.

Mr. MACKEY: Objected to as leading.

A. I have seen her there, I think, once or twice.

Q. How long ago?

A. That has been 1878 or 1879.

Q. Do you know whether or not she bought any real estate in this city?

A. I do not know. I think she was talking to Mr. McIntire about real estate.

275 Q. Well, do you know what has become of her?

A. No, sir; I think she went out West somewhere. I do not know whether to Pittsburgh or to Chicago or California. She went somewheres; I do not know. I have not seen her for years.

Q. How long has it been since you saw her?

A. I do not think since 1879 or 1880. Between 1879 and 1880 was the last time I ever saw her, I think. I was in the Pension Office then, which was in the Shepherd building at that time.

Q. I want to know whether at any time several years back Mr. McIntire inquired for her of you.

A. Yes.

Q. That is, to know whether you knew where she was?

A. Yes, sir; several times some years back, and I told him that I did not know what had become of her, as I had not seen her.

Q. How long back did he make those inquiries of you?

A. It has been some eight or nine years back since he asked me about her. Well, he asked me about her since that time, and he told me that he wished I could find out where she went and to let him know, and I told him that I would try and find out and let him know.

Q. Did you make any effort to find out about her?

A. I asked some folks about her and they said they did not know anything about her.

Q. Do you know Miss McIntire (referring to Emma T. McIntire), this lady who is sitting here on the sofa?

A. Yes, sir; I have seen her often, but I never had any
276 introduction to her until today.

Q. Who is she?

A. She is Mr. McIntire's sister.

Q. She is not the Emma Taylor that you speak of?

A. Oh, no; Emma Taylor was a different looking lady than her.

Cross-examination.

By Mr. MACKEY:

Q. You say that you carried on the ice-cream business in 1877?

A. Yes, sir; I kept it in 1876—from 1876 to 1879.

Q. And when was the first time you saw Emma Taylor?

A. I saw her in the spring of 1876, when I first opened.

Q. She came in there to buy ice cream?

A. Yes, sir; by the box.

Q. Did she live far away from there?

A. I think she roomed around on 13th street. I do not know where. I did not deliver any to her place.

Q. Where was your ice-cream place?

A. On G street, No. 1204 G street northwest, it was then; right back of Mr. Goddard's grocery store on the corner. I kept in Susan Burgess' house setting back in the yard.

Q. Did she come there very often?

A. Yes, sir; when the weather was warm.

Q. How did you find out what her name was?

A. She had a lady friend with her, and she called her Emma Taylor.

Q. Who was this lady friend?

277 A. I do not know.

Q. That is what she called her?

A. Yes, sir; and this other lady brought her there because I kept pretty good ice cream, and one would tell another.

Q. You used to sell ice cream to the other lady?

A. Yes, sir.

Q. You do not know what the other lady's name was?

A. No, sir; sometimes I would sell fifteen or twenty gallons a day, and a good many people would come in after it.

Q. How did she come to call her Emma Taylor?

A. She says, "Emma, this is nice ice cream this gentleman keeps; it is better than Fussel's;" and there was another lady came there at one time with three other ladies.

Q. You say that she said, "Emma, this is nice cream"?

A. Yes.

Q. And that told you her name was Emma?

A. Well, another party came there at one time, three at one time, and they called her Emma Taylor.

Q. How did they come to call her Emma Taylor?

A. I do not know.

Q. You remember her name from that fact?

A. Well, she came there so regularly for two years, off and on, and then Miss Forsyth used to come there with her.

Q. Who was she?

A. Her father used to keep a dining-saloon on F street between 9th and 10th northwest, but he never came with any of them.

Q. Do you know what her first name was?

278 A. No, sir; Mrs. Forsyth, that is all I know; she was a married lady, because her name was Mrs. Forsyth.

Q. Was she his wife?

A. Yes, sir; and she left him here some years back and are not living together.

Q. Do you know where she is living now?

A. No, sir; I never heard from her since she left him. He went back to Florida; I think he did.

Q. Do you know anybody else who knew her and who came with her to your store?

A. No, sir; there were hundreds of people, both ladies and gentlemen, who came there.

Q. That was in 1876, you say?

A. Yes, sir; from 1876 up to 1877, and part of 1878 that she used to come there.

Q. She was then how old?

A. Twenty-four or twenty-five years old she looked to be.

Q. At that time?

A. Yes, sir.

Q. Do you know what sort of clothes she wore?

A. Well, in warm weather she would wear summer clothes.

Q. Did she dress gaudily?

A. Sometimes showey and sometimes, in cool weather, she would dress in dark colors.

Q. How did you come here to testify?

A. Well, the way I come here was that Mr. McIntire said there was going to be a trial here and he wanted to prove that there was such a person in this city.

279 Q. Did Mr. McIntire come to you to know if you knew her?

A. Well, my name is Taylor, and when I used to go there for renting houses from him he says: "I know a lady named Emma Taylor. Do you know whatever became of her?" And I told him that I knew her, but I did not know where she was, and he asked me to try and find out.

Q. When was that?

A. That has been six or seven years ago.

Q. You said in your direct examination that it was eight or nine years ago.

A. He asked me since, off and on, in reference to her.

Q. When did he first ask you about her; eight or nine years ago?

A. Yes, sir; the first time, and then he asked me several times since; all along.

Q. He would keep on asking you that?

A. Yes, sir; he wanted to know if I found out anything about what become of her, and I told him I had not.

Q. You met him often since then?

A. Yes, sir; I met him in his office and met him on the street, and he would ask me what had become of her, and I told him that I did not know and could not tell him.

Q. Whenever he met you he would ask you about her?

A. Yes, sir.

Q. Probably three or four times a year?

A. Yes, sir; sometimes he would meet me on F street or wherever he was on business, and he would stop and talk with me, and he would say: "Did you ever find out what became of Emma

280 Taylor?" And I said, "No, I could not find out; she has gone out West somewhere, but I do not know where."

Q. Those inquiries were kept up, commencing eight or nine years ago; when did he cease asking about her?

A. A year or so ago.

Q. During all that time he asked you about her?

A. Yes, sir; whenever he would see me.

Q. And you met him four or five times a year?

A. Yes, sir; at least that.

Q. Probably oftener?

A. Yes, sir; oftener sometimes. I have had several keys from his new place, looking at houses, and I have seen him often.

Q. You say that you started to make inquiries for him about her. When did you first commence to make inquiries for him about her?

A. The first time he asked me.

Q. Of whom did you inquire?

A. Well, I inquired of some people who kept boarding places whether they ever knew a lady named Emma Taylor, and they said "No."

Q. Who were the people you asked?

A. I do not know.

Q. You do not know the names of anybody you asked?

A. No, sir; well, I asked many persons the question that would know.

Q. Name some of the persons you asked.

A. I asked a lady at one time that kept a boarding place on 13th street, between G and H northwest; some years ago she kept
281 a boarding place there.

Q. What was her name?

A. A lady named Beale, I think, and then a gentleman who rented a boarding-house around there, where she used to take meals, and then he ran away and did not pay his debts.

Q. What was his name?

A. I do not know.

Q. You do not — the name of this lady who kept a boarding-house, except, you say, that her name was Beale?

A. Yes, sir.

Q. And she kept a boarding-house on 13th street between G and H?

A. Yes, sir.

Q. Do you remember the number?

A. No, sir.

Q. On which side of 13th street?

A. I think on the west side.

Q. You say you think. Do you not know whether it was the east or west side?

A. I think it was on the west side.

Q. Do you not know whether it was the east or west side?

A. No, sir; I could not swear positively, but I think that is where she kept.

Q. Did you go to the house to inquire of her?

A. No, sir; I saw her on the street.

Q. How did you know that she kept a boarding-house?

A. Because when I was in the ice-cream business she used to buy ice cream from me.

Q. Did you send the ice cream to her or take it to her
282 yourself?

A. She used to get a gallon or a half a gallon at the time, and I sent it there.

Q. Well, you ought to know where you sent it?

A. I do not remember the number, because there have been so many changes around there since I kept my ice-cream place.

Q. Would know the place if you were to see it?

A. I do not know, because they have torn those fronts out and remodelled there.

Q. I am speaking of this boarding place of Mrs. Beale's?
A. That has been remodelled, too, on 13th street.
Q. Did you take the cream there yourself?
A. I did my own work.
Q. How many times did you take the ice cream there?
A. Sometimes every Sunday.
Q. For a long time?
A. Yes, sir.
Q. You cannot tell where it was, although you took it there yourself frequently?
A. I never had any bills against her, for she always paid me the money.
Q. You say that you took ice cream there frequently; probably fifty times?
A. Well, I took it there every Sunday.
Q. For how long?
A. The whole time I was in business.
Q. For two or three years?
A. Yes, sir; I do not know any other name but Mrs. Beale, and I never heard anybody else call her name.
283 Q. You do not know her first name?
A. No, sir.
Q. You are not certain that her name is Beale?
A. Yes, sir; her name was Beale, but that is all I do know. I think she kept on the west side. She rented her dining-room out, and the gentleman who kept the place ran away and owed me seventy-five dollars; he was a clerk in the Treasury, and he drew all his money out. He had fifty or twenty-five boarders, and he got all the money and ran away.
Q. You said awhile ago that you thought she lived on the west side, but was not sure of it?
A. On the odd-numbered side, on the west side.
Q. You are not sure about that?
A. On the west side, on the odd-numbered side. I know it was an odd number.
Q. Do you know where the place is today? Could you go to the place?
A. I do not know the number any longer. E. B. French used to deal with me, and he lived on the same side she did.
Q. What side was that?
A. On the odd-numbered side, on the west side.
Q. You stated awhile ago that you were not certain whether it was the west side or the east side. Do you want your answer to be changed from that?
A. I think she kept on that side.
Q. What side?
A. On the east side.
Q. Do you know the east side from the west side of the street?
284 A. Yes, sir; the odd numbers were on the west side, and her number was an odd number.
Q. You cannot remember what number it was?

A. No, sir.

Q. Why do you say that it was an odd number when you cannot remember what number it was?

A. Because it was on the same side that Mr. French's number was. She lived in the same block.

Q. You have said that you do not remember on what side of the street she lived, have you not?

A. I said so.

Q. Well, is that so?

A. I know this, that her number was an odd number, and that if she lived on the other side it would have been an even number. It has been a long while ago.

Q. And yet you remember those things back ten or twelve years?

A. I do not have any interest in it one way or the other.

Q. I want to ascertain whether you can remember on what side of the street Mrs. Beale lived. You have answered a half a dozen times on what side of the street she lived. Now, I ask you whether you are certain of that.

A. She lived in a house with an odd number, and it was on the west side.

Q. Why did you say awhile ago that you were not certain?

A. I said it without thinking.

Q. Now, you are satisfied that she lived on the odd-numbered side of the street?

A. Yes, sir.

285 Q. She is one person whom you asked? Do you know anybody else?

A. No, sir; I never asked anybody else.

Q. Did you ask anybody else than her?

A. She is the only person, because she used to board a good many ladies who roomed about.

Q. Now, you state that Mrs. Beale is the only person whom you asked where Emma Taylor was?

A. The only person.

Q. Why did you state in your direct examination, in answer to Gen. Henkle, that you have asked several people about her—a number of persons?

A. Well, I have asked some people who I thought would know, and they did not know her; they did not know anything about any such person.

Q. Then you have asked more people about her?

A. Yes, sir; but I could not tell the names of the persons.

Q. Did you go up to a stranger whom you did not know and ask where Emma Taylor was?

A. I have asked persons when I went into their places about Emma Taylor.

Q. What places?

A. I did not go into places.

Q. You say that you asked persons when you went into their places about Emma Taylor.

A. I asked persons whom I met on the street who kept places where people got lunches.

Q. You have asked them on the street?

286 A. Yes, sir.

Q. You did not know who they were?

A. No, sir; I never knew their names.

Q. Did they live in your neighborhood?

A. No, sir.

Q. They were total strangers to you?

A. Yes, sir.

Q. You would just go up and ask strangers on the street, and ask who and where Emma Taylor was?

A. They kept places. I do not know what they keep now.

Q. You just met them on the street and asked them where Emma Taylor was?

A. Yes, sir. I asked them whether they ever knew such a person as that, and they said, "No;" that they never knew any person of that name.

Q. Why did you go to people you did not know instead of going to people you did know?

A. All the people around that I did know could not tell me anything about her.

Q. Did you ask them?

A. No, sir.

Q. How did you know that they could not tell you?

A. Because I knew they could not. I did not ask people who kept private houses about her.

Q. These people you asked about her kept furnished rooms?

A. Yes, sir.

Q. How did you know that they kept furnished rooms if you did not — their names?

287 A. By sight, when I was in business.

Q. Did you say awhile ago that you did not ask anybody who lived around where you lived?

A. I had customers all over the city, and I could not tell you their names if I was put on oath. That is all I know about the case and it is not worth while to ask me anything further about it.

Q. You saw Emma Taylor, you say, at Mr. McIntire's office?

A. Yes, sir.

Q. When was it that you first saw her there?

A. In 1877 or 1878.

Q. How long was it after you first saw her at Mr. McIntire's office that he asked you if you knew what had become of her?

A. Well, I went into Mr. McIntire's office to rent a house. I got the keys from him to look at the house and he asked me whether I knew anybody by the name of Emma Taylor, it being the same name as my last name, Taylor, and I said, "Yes;" that I knew a lady named Emma Taylor, who used to buy ice cream from me when I was in business, and he asked me where she was.

Q. When was that?

A. I was employed in the Pension Office, in the Shepard building, at that time.

Q. How long after you first saw her?

A. Well, some time between 1880 and 1881.

Q. That is when he first asked you what had become of her?

A. Yes, sir.

Q. And from that time on whenever he met you he asked you what had become of her?

288 A. Yes, sir.

Q. And you fixed that date by the fact that you were then employed in the Pension Office?

A. Yes, sir. I was then in the Pension Office in the Shepard building. I got my appointment there on the 10th of March, 1879.

Q. How do you come to say here in your testimony that you told Mr. McIntire that you did not know whether she had gone to Pittsburgh or Chicago or California?

A. Well, I do not know how I did come to say that; but I knew that she had gone somewhere out West.

Q. How did you find out that she went West?

A. I thought so. I missed her.

Q. You said a moment ago that you thought she went out West?

A. I thought she had gone out West.

Q. What caused you to think that she had gone out West?

A. I do not know.

Q. Nobody told you that, you just guessed at it?

A. Yes, sir.

Q. Did not Mr. McIntire suggest to you that she had gone to Pittsburgh?

A. Well, he had written several letters to several places, but he never could find out where she had gone.

Q. Did he tell you that he had written to Pittsburgh?

A. Yes, sir; that he had written to Pittsburgh and the letter came back, I think he said.

Q. Was that before or after you told him that you did not know whether she had gone to Pittsburgh, or Chicago, or Cali-

289 fornia?

A. That was since I told him that—that he had written, but could not find out where she was.

Q. When was it that he first told you that he had written to Pittsburgh about her? Was that shortly after he first inquired of you about her?

A. No, sir; that was way afterwards.

Q. Was it a year, or two years, or three years?

A. I think it was a year or two. It was long before I got appointed in this administration.

Q. It was a year or two years after he first inquired of you where she was that he told you he had written to Pittsburgh inquiring about her?

A. Yes, sir; that he could not find out anything about her, and that he had written to Chicago and could not find out anything about her.

Q. Have you business relations with Mr. McIntire?

A. No, sir; none either one way or the other; no more than I have with you.

Q. You never negotiated any loans with him?

A. No, sir; I never had any dealings with him at all, only I looked at some houses that he had for rent, but they did not suit me. I told him that if he had any cheap small houses that I could buy on easy terms that I would buy one, and he said he would look out for one, but since then I bought one from Charles Early.

Q. When you first saw this Emma Taylor at Mr. McIntire's office, what was she doing there?

290 A. I think she was talking about some property; but, of course, I did not stop there and listen.

Q. What makes you think that?

Q. Well, she was talking about something.

Q. Talking to whom?

A. To Mr. McIntire. Whether she ever bought any property I could not tell.

Q. Who else was there besides yourself?

A. No one else when I was there; only myself and she and him. I only stopped there a few minutes to see what kind of houses he had to rent on his list.

Q. And then you heard him and her talk about property?

A. Yes, sir; about business matters; the same as you go into a place and persons are talking about business. That is all I know about it.

Q. Did you ever see her there again?

A. I do not think I ever saw her there but once or twice.

Q. When was the second time?

A. I am not sure about the second time. It has been so long ago, and I never thought anything would come up about the matter.

Q. Did Emma Taylor always buy ice cream from you on credit or cash?

A. She always paid cash. Anybody who buys by the box or by the gallon always pays cash.

Q. Do you know whether or not Mr. Forsyth knew this Emma Taylor?

A. I never seen them together.

291 Q. Do you think you could, by making inquiries, find out about Mrs. Beale?

A. I do not know where she is. I met her once some years ago, but I do not know what her initials are, even.

Q. Do you know whether she was a widow or a marred lady?

A. I think she was a widow. She kept a boarding-house on 13th street between G and H streets, while I was in the ice-cream business. That was in 1876 and 1877, but she burst up in business before I gave up my business.

Q. Who is this man Forsyth you speak of?

A. He is a gentleman who kept a dining-saloon on F street between 9th and 10th streets, northwest. It was either this side of

Warner's building or the other side, I do not know which now. It was on the same side of the street that Warner's building is on, but I do not know whether it was above or below it.

Q. Do you know what his first name is?

A. No, sir.

Q. Do you know where he is now?

A. No, sir.

Q. That was in 1876 and 1877?

A. Yes, sir.

JOHN TAYLOR.

* * * * * * *

292 NOVEMBER 30, 1892.

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Charles F. Schafer.

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Direct examination.

By Mr. HENKLE:

Q. You reside in the State of Washington?

A. Yes.

Q. At what place in the State of Washington?

A. In Shagit county.

Q. In what business?

A. In the lumber business.

Q. How long have you been in Washington State?

A. About seven years.

Q. Where did you go from?

A. From Portland, Oregon.

Q. Did you ever live in this city?

A. Yes, sir.

Q. How long ago?

A. I left Washington city in 1880.

Q. How long did you live in Washington city?

293 A. From 1853 to 1880.

Q. Who was your father?

A. George F. Schafer, president of the German-American Fire Insurance Company of this city.

Q. In what business were you engaged in 1879?

A. In 1879 I was making loans and buying real estate.

Q. Where did you make your headquarters?

A. In the early part of 1879, at the office of Mr. Edwin A. McIntire.

Q. Where was that?

A. On the south side of F street between 9th and 10th streets northwest, in this city, in an old frame house, which is now torn down and which was on the corner of the alley next to B. H. Warner's building, in the old Schneider property.

Q. How frequently were you in there?

A. Every day to look at the Real Estate Record, the Court Record, notices of purchases; in those days loans were very scarce, and I was frequently around his office to pick up what I could.

Q. I want to ask you whether or not you met or saw at Mr. McIntire's office a lady known as Emma Taylor?

A. I met a lady there; I was not introduced to her, but I was informed that she was Emma Taylor. She came in the office while I happened to be there quite frequently.

Q. Do you know what her business was there?

A. Well, she would talk about buying real estate.

Q. With whom did she talk?

A. With Mr. Edwin A. McIntire.

294 Q. You saw her there quite frequently?

A. Well, yes.

Q. Do you know whether she was a married or single lady?

A. I did not know anything about that.

Q. Do you know this lady (pointing to the defendant Emma T. McIntire), sitting on the sofa here?

A. I believe I remember seeing that lady there.

Q. Is she the lady that you refer to as Emma Taylor?

A. No, sir; I think not. Emma Taylor was a taller lady; at least, I think so. The reason why I remember her so well——

Q. (Interposing.) Remember who?

A. This lady whom they call Emma Taylor. I say the reason why I remember her so well being in Mr. McIntire's office was that when she came there the clerks would be guying him about marrying her—that is, that Mr. Edwin A. McIntire was going to marry her. That is what called my attention to her. She used to move her hands up and down, and that is how I come to remember her.

Q. When did you last come to this city?

A. Last September.

Q. When did you first meet Mr. Edwin A. McIntire since your return?

A. Last Saturday afternoon, by accident, on the street. We were talking about different things—talking about some property that I had some business with—and in the conversation he spoke up about Emma Taylor.

Q. What did he ask you about her?

A. He asked me if I remembered such a woman coming there in the office; and, after thinking about it, I told him that I

295 did remember her.

Cross-examination.

By Mr. MACKEY:

Q. You say that it was in 1879 that you used to go into Mr. McIntire's office?

A. Yes.

Q. And that was the time you saw Emma Taylor there?

A. Yes.

Q. About how often did you see her?
A. Well, I saw her frequently; that is all I could say.
Q. You saw her frequently there in 1879?
A. Yes.
Q. Did you ever see her there after 1879?
A. No, sir; I left there in 1879.
Q. Who informed you that her name was Emma Taylor?
A. The clerks in the office called her Emma Taylor. I only know from hearsay that her name was Emma Taylor—that is, by hearing them call her Emma Taylor.
Q. Who were the clerks in the office?
A. I think Mr. Atkinson and Mr. Zeverly.
Q. Did you know Mr. Harleston?
A. I did not know him by that name.
Q. Did she buy any property at that time?
A. Well, she was talking about buying and selling real estate, and that is all I know about it. I did not pay particular attention, as it was none of my business.
Q. Do you know whether she bought or sold real estate?
A. I could not tell you that.

CHAS. F. SCHAFER.

296 Q. Well, did she talk as if she was buying real estate?
A. She talked about buying and selling.
Q. How old a woman was she?
A. I do not know. That is a pretty hard question to answer. I judge she was about—well, I suppose if she is living now she will be about forty years of age.

NOTE.—For signature of witness to this deposition see bottom of preceeding page. Though the witness read the entire deposition to this point he inadvertently signed at the place indicated, and that fact was not noticed by me until after the witness had left the city.

Subscribed and sworn to before me this 30th day of November, A. D. 1892.

ALBERT HARPER, *Examiner.*

Elmer E. Atkinson.

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Direct examination.

By Mr. HENKLE:

Q. What is your residence and business?
A. No. 1004 K street N. W., in this city; I am a pension attorney.
Q. Where is your office?
A. No. 602 F street N. W., in this city.
Q. In what were you engaged in the years 1879 and 1880?
A. In 1879 I was with Mr. Edwin A. McIntire; I went with him when he first opened his office, and I remained with him until the latter part of 1880.

Q. Where was his office?

A. No. 918 F street northwest, in this city, where the old frame building was in the corner of the alley.

297 Q. What was you- business there?

A. I can hardly say. I was clerk, book-keeper, and collector, and did generally most anything that I was called upon to do.

Q. I want to know whether among the people who came to the office you remember a lady by the name of Emma Taylor.

A. Yes, sir; I remember that there was a lady who used to come into the office off and on by the name of Emma Taylor.

Q. Upon what business did she come?

A. She used to come to see Mr. McIntire, but in relation to what business I did not know exactly. I know that at one time she used to come in there about some houses that she had an interest in, a big old house up near the bridge in Georgetown, and she put it in his hands for sale while I was with him.

Q. Well, how often did she come there?

A. That is hard for me to say. I know that I saw her there a number of times. I know that I saw her there a dozen or two dozen times. I suppose I have seen her there a dozen times, at least.

Q. Did that extend through the whole period that you were there?

A. I could not say what time during that period, but it was during that period, in 1879 and 1880.

Q. Do you know this lady (pointing to the defendant Emma T. McIntire), who is sitting here?

A. Yes.

Q. She is not the lady to whom you refer as Emma Taylor?

298 A. No, sir; she is not the one I knew by that name.

Q. Do you know whether or not Mr. Helmick, the justice of the peace, knew Emma Taylor?

A. I think he did. If I am not mistaken, he came into the office once to see Mr. McIntire in relation to her, and I know that once Mr. McIntire went to Mr. Helmick's office with her; I do not know what about.

Q. Do you know anything about her bargaining with Mr. McIntire for property?

A. No, sir; I could not say that I do. I know that she used to come in and see him. In the office we had a desk that stood across the room, and there was a glass case round —, and back of that was Mr. McIntire's desk—that is back of where I stood—and they would go back there towards the window, and I would be going on with my business and not paying any attention to what was going on at his desk.

Q. Do you know where she had lived before?

A. I understood that the lady was from Philadelphia.

Mr. MACKEY: I object to the understanding of the witness.

WITNESS: All I know about the lady is that I understood she was not a resident of Washington, and she used to come in the office

off and on when she was here. I understood that she was from Philadelphia, but I did not know anything more about that.

Mr. MACKEY: The understanding of the witness is objected to.

Q. Do you know what became of her?

299 A. No, sir. I never heard of her after I left the office, because then I left Washington myself.

Q. I want to ask you how old a woman Emma Taylor was.

A. I could not state her exact age or anything of that kind. She was a young woman; I suppose anywhere between twenty and thirty years of age; but I am not a good judge of ages.

Cross-examination.

By Mr. MACKEY:

Q. About when did you leave here?

A. In 1880.

Q. In the early or latter part of the year?

A. Along in the early part of the year.

Q. In the spring or late winter?

A. Let me see; I think I can tell you just about when it was. It was along in May or June.

Q. You staid away how long?

A. I was away from Washington—well, it has been four years ago since I came back here.

Q. This was in 1879, you say, that Emma Taylor was coming to the office?

A. Along in that time. It was while I was in the office that this lady came there.

Q. How did you know that her name was Emma Taylor?

A. I understood at the time that was her name. I do not know just how I knew it, but just the same as anybody knows.

Q. Did she tell you that her name was Emma Taylor?

A. Not that I know of.

Q. Did you get that understanding from Mr. McIntire?

A. No, sir; not that I know of. I may have gotten it from

300 Mr. Zeverly, who was also a clerk in the office with me at the time.

Q. You did not get it from Emma Taylor?

A. Not that I know of; although she may have told me, for it has been so long ago I cannot tell.

Q. What part of the business did you attend to?

A. I did general work in the office. I attended to the books & the collecting. I went around for the rents—well, I did the general work that a clerk in a real-estate office does.

Q. The books that you kept related to what?

A. To the rents and collections.

Q. You did not have anything to do with the entrys of sales?

A. I never had anything to do with those.

Q. Who had charge of that?

A. Mr. McIntire himself.

Q. Was there a book kept for that purpose?

A. I think he kept one, but I never saw it—that is, he kept a book of private accounts in the safe, but I never had anything to do with that.

Q. Did Emma Taylor have any property to rent with Mr. McIntire?

A. There was a house that she had some interest in. I do not know what it was—a house that we had in our hands for rent. I do not remember whether the house was ever rented or not, but I know that some people lived in it and took care of it.

Q. What house?

A. I believe it is on Bridge street, in Georgetown, off towards the river, a big house with a plastered front, and the last time I saw it a good deal of the plaster had fallen off.

301 Q. Could you locate the house?

A. I think I can.

Q. If you can, please locate the house by the lot and square.

A. I can do that, but not now. I remember perfectly the house and know just exactly where it is and I have gone up there myself.

Q. You have made a business of locating lots and squares in the city?

A. Yes, sir.

Q. I would be glad if you will in the interval between this and the next session locate that property by the lot and square, and also the number of the house.

A. The house was in existence the last time I was up there.

Q. You say that she had an interest in that property?

A. Some interest. I know that she came in to see about it. I do not know whether she owned the house or had an interest in it left to her or what it was. I know that she spoke of that house while in the office. I know that we had it on the boards at that time for rent, but whether we got a tenant for it I could not say.

Q. Now, you say that at one time Mr. McIntire went with this woman called Emma Taylor up to Mr. Helmick's office.

A. Yes, sir; I remember once of his going there with her.

Q. How do you know that he went to Helmick's office with her?

A. When he would leave the office he used to say where he was going and when he would be back if any one came in for him.

Q. That was the only way you knew?

302 A. He said that he was going to Judge Helmick's office, and that he would be back in a few minutes, and she was with him.

Q. Did he say that he was going there to acknowledge a deed?

A. He did not say anything about that or what it was, that I remember.

Q. You did not see him go into Mr. Helmick's office?

A. No, sir; because I was in our office.

Q. He left his office saying that he was going there?

A. Yes, sir; and that is all I know about it.

Q. You say that Mr. Helmick knew Emma Taylor. Do you mean that he knew her personally?

A. I do not know whether he did or not.

Q. Do you know of her buying or selling any real estate while she was in McIntire's office and while you were there?

A. Nothing of the kind while I was in the office. I knew very little about the sales.

Q. Did she ever talk about buying or selling real estate?

A. That I would not like to say; I would not like to try and repeat a conversation which occurred about twelve years ago. I have been all over the country since then and have seen a good many people.

Q. Did Emma Taylor look anything like Emma T. McIntire?

A. I do not think she did.

Q. In what respect were they unlike—in size, features, form, or what?

A. I cannot remember distinctly the lady. I know Miss Emma T. McIntire. I have known her ever since I was with Mr.
303 McIntire. I could not say whether, from what I remember of her—I do not think she was much taller than Miss McIntire; she may have been some, but she was not the same style looking woman at all.

Redirect examination.

By Mr. HENKLE:

Q. Did you at any time see Emma Taylor and Justice Helmick come into Mr. McIntire's office together?

A. That I could not remember.

Q. Do you remember ever seeing Justice Helmick in Mr. McIntire's office when she was there?

A. Well, I do not know; I do not know whether he was in the office when she was there or not. He used to be in our office pretty much every day or so, and he may have been there when she was there, but I could not say.

Q. Justice Helmick's office was right close by?

A. Yes, sir; just above, in the old Talmadge hall that used to be there.

ELMER E. ATKINSON.

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304 DEC. 30, 1892.

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Richard T. Pettit.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. What is your full name, age, business, and residence?

A. Richard T. Pettit; thirty-three years of age; I am a real-estate clerk, and I reside at No. 2104 H street northwest, in this city.

Q. How long have you lived in this city?

A. All my life.
Q. Did you know Mr. J. T. Coldwell, auctioneer?
A. Yes, sir.
Q. How long ago did you know him?
A. I suppose about 1874; at least from 1874.
Q. Up until his death?
A. Yes, sir.
Q. Were you associated with him in business?
A. Yes, sir.
Q. What did he do and what did you do?
A. When I was a small boy Mr. Coldwell was auctioneer
305 at our office, B. H. Warner & Co. He was salesman for us and I used to go around with him to ring the auction bell.
Q. And then subsequently what did you do; anything else than ringing the bell as long as you were with him?
A. No, sir; not then.
Q. How frequently did you attend his sales?
A. Every sale we had. I attended every sale we had. Of course when we had two sales on the same day we would have to get another auctioneer and I would not go.
Q. Well, what was his habit when he knocked down property at a sale; what did he say or do?

Mr. MACKEY: I object to any testimony as to what Mr. Coldwell's habit was in selling property. The question is here, what did he do at the particular sale in question?

A. Generally he would say, "Going once, going twice." Of course this is to the best of my knowledge and recollection, as it has been eight or nine years ago that I attended sales with Mr. Coldwell. He would generally say, "Going once, going twice, third and last call. Are you all done? Fair warning, going, going, gone," and then he would generally say that the property was sold to so and so, whoever the party was.
Q. In what tone of voice would that be, loud or otherwise?
A. I cannot say really whether it was in a loud voice, but of course his voice was more than an audible tone in crying a sale. I do not think his voice was as loud as Dowling's, who strikes me as having rather a loud voice.
Q. Did you ever hear him say, "I knock*ed* this property down to A B," the purchaser?
306 A. I do not think I ever did.
Q. Can you form any idea as to how far his voice could ordinarily be heard when he was crying a sale?

Mr. MACKEY: Question objected to as calling upon the witness to give his opinion in a matter concerning which he is not shown to be an expert or to have any experience.

A. Well, I cannot say that I can.
Q. Were you familiar with Mr. Coldwell's handwriting?
A. Yes, sir; to a certain extent.

Q. Will you look at this paper and the signature to it and say whether it is in his handwriting or not?
A. Yes, sir; I am almost positive it is.
Q. You knew his handwriting well, did you?
A. Yes, sir.
Q. And you are almost positive it is — handwriting?
A. Yes, sir.
Q. Well, are you not positive?

Mr. MACKEY: Question objected to as leading.
(NOTE.—Question withdrawn.)

Q. Well, how positive are you?

Mr. MACKEY: Question objected to. The witness has said how positive he is. He said he was almost positive.

A. Yes, sir; I would say that is in his handwriting.

Mr. HENKLE: I here give this paper in evidence.
307 (NOTE.—And the same is herewith filed in evidence and marked "Exhibit 21.")

Cross-examination.

By Mr. MACKEY:

Q. How old are you?
A. Thirty-three years of age.
Q. In 1881, then, you were about 20 years of age, of course, if you are thirty-three years of age now?
A. Yes; well, no; 1879 would make me twenty years of age. I was about twenty-two years of age in 1881. At that time I was not in the employ of Mr. Coldwell.
Q. I was going to ask you if you were in his employ at that time.
A. I never was in his employ.
Q. Did you go with Mr. Coldwell to his sales in 1881?
A. I did not.
Q. When did you cease to go with him to his sales?
A. At the time he left our office, B. H. Warner & Co., we were both employed there.
Q. When was that?
A. I really do not know.
Q. Well, you know when you were twenty-two years of age. About how old were you when he left there?
A. I really do not know the year he left there.
Q. Was it four or five years before that before you were twenty-two years of age—that is, when you were about fifteen or sixteen years of age?
A. No; I suppose when I was 18 or 19 years of age Mr.
308 Coldwell was still with us. That is just a supposition, but I could tell from our books.
Q. Was he with you when you were twenty years of age?
A. I do not think he was.

Q. Have you seen Mr. Coldwell write since he left the office?
A. Yes, sir.
Q. You said a while ago that you were connected in business with him. What did you mean?
A. That I was employed with B. H. Warner & Co. and he was also.
Q. That was what you meant by saying that you were connected in business with him?
A. Yes, sir.
Q. You mean that you and he were connected with the same house by being employed by that house?
A. Yes, sir.
Q. How did you come to see Mr. Coldwell write since he left the office?
A. Just by being in his office; by his making sales for us—that is, for our house.
Q. Which part of this paper (Exhibit A. H. No. 21) is in Mr. Coldwell's handwriting, or is it all in his handwriting?
A. I think it is all in his handwriting. I recognize the signature especially.

Redirect examination.

By Mr. HENKLE:

Q. Mr. Coldwell was in the same office with you?
A. Yes, sir.
309 Q. Do you remember when he left the office or do you remember that he left there in 1879?

Mr. MACKEY: Objected to as leading.

A. I do not remember.
Q. Do you remember whether Mr. Coldwell left after Mr. McIntire left the office?
A. I do not.
Q. Well, how was it as to your keeping up your familiarity with Mr. Coldwell's handwriting down to the time of his death?
A. Just by having seen it from time to time.
Q. Well, did you keep — your acquaintance with his handwriting down to the time of his death?
A. Not specially, but by seeing his handwriting in his office.
Q. You kept up your acquaintance with his handwriting so that you would know it?
A. I think I would.
Q. Do you know when he died?
A. I remember the circumstance, but I do not remember the date of his death.

Recross-examination.

By Mr. MACKEY:

Q. When you say that you saw his handwriting in the office, did you see him write himself or did you merely see his handwriting?

A. No, sir; I saw him write.

Q. You say that Mr. McIntire left the office of Mr. Warner.

310 Was he ever in the employ of Mr. Warner?

A. Yes, sir—that is, he was a member of the firm.

Q. Was he a member of the firm when you were there?

A. Yes, sir.

Q. Did he leave when you were there?

A. Yes, sir.

Q. Do you know why he left?

A. No, sir.

Q. You have no knowledge of the reasons why the firm was dissolved?

A. No, sir.

Q. Did Mr. McIntire ever tell you?

A. No, sir.

RICHARD T. PETTIT.

* * * * * * *

Robert Waldron.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. Where do you live?

A. No. 835 6th street northeast, in this city.

Q. How long have you lived in Washington?

A. About ten years.

Q. Did you live here in October, 1886?

311 A. Yes, sir.

Q. What was your business?

A. Carpenter and builder.

Q. Did you have any partner in business at that time—that is, in October, 1886?

A. Yes, sir.

Q. Who was your partner?

A. Charles Medford.

Q. What was the name of your firm?

A. Medford & Waldron.

Q. Did you make any contract with Mr. Edwin A. McIntire to build houses in that year?

A. Yes, sir.

Q. Will you be kind enough to look at that paper (Exhibit A. H. No. 18) and say whether that is a copy of the contract or the contract itself?

A. Yes, sir; I believe that is the contract, from what I can see of it.

Q. Who is — signed by?

A. It is signed by our firm of Medford & Waldron, in the handwriting of Mr. Medford, I think; I am pretty sure it is in his handwriting.

Cross-examination.

By Mr. MACKEY:

Q. Did you see that contract signed?

A. That I could not say exactly, as it has been such a long time ago; I may have been there, but I am not positive.

Q. The name of Waldron in the firm name of Medford &
312 Waldron, signed to this contract, is your name?

A. Yes, sir.

ROBERT WALDRON.

* * * * * * *

MARTHA MCINTIRE, * * * being recalled for further cross-examination.

By Mr. MACKEY:

Q. You say that you paid Mr. Jenison one hundred dollars to get a deed corrected of this Prior property—that is, the conveyance of the Prior property by him. Do you remember when you paid that one hundred dollars?

A. No, sir; I do not remember the exact date.

Q. Do you remember whether you paid it to him or whether your brother, Edwin A. McIntire, paid it to him?

A. My brother attended to all of my business of that kind. It was a quitclaim deed.

Q. Was that one hundred dollars paid by check?

A. I do not have checks, as I told you before. I gave him the ready money—I gave him cash.

Q. Where did you get the money that you gave your brother—out of bank or at home?

A. I think more than likely that I had it at home, but I cannot remember exactly where I got the money at that particular
313 time, for it has been a long time ago. I kept money at home at that time, but I do not do it any more.

Q. Well, at that time you had bank accounts?

A. I have not had bank accounts since I have lived in Washington.

Q. Well, when this one hundred dollars was paid did you get the deed from Mr. Jenison?

A. I got the quitclaim from him.

Q. Did you pay the one hundred dollars before or after you got the quitclaim?

A. I do not know. I gave the money to my brother and he attended to it. I know that Mr. Jenison sent the deed to Minnesota to get the signature of his wife. His wife was out there.

Q. And when the deed came back you paid the one hundred dollars?

A. I gave the money to my brother and he attended to it.

Q. Do you know what mistake there was in the deed or just what your brother told you about it?

A. It was just what was found out about the deed.

Q. Do you know what it was of your own knowledge or what you were told by your brother?

A. What I was told. I am not a real-estate agent.

Q. You have no memoranda showing when you paid the one hundred dollars to your brother to give to Mr. Jenison?

A. Yes, sir; I think I made a memorandum of it. (After examining memoranda:) I find that I did not set it down on the memoranda.

Q. Have you memoranda with you of dates, etc., in this
314 matter?

A. Some things I wrote down myself.

Q. Where did you get the data from?

A. From some old papers I had.

Q. Connected with this matter?

A. Well, some are and some are not.

Q. Did you get some of the data from your brother?

A. No, sir; they are my own.

Q. You never got any of the data from your brother?

A. No, sir; I had my own papers.

Q. Have you talked with your brother about this case?

A. I have talked with him.

Q. And compared notes with him as to the various matters in the case?

A. Yes, sir; it was natural for us to talk together, Mr. Mackey.

Q. And you would call upon him for information, would you not?

A. Yes, sir; of course. When I wanted to know anything I called upon him.

Q. Then a good deal of your testimony here is given from information derived from your brother?

A. Yes, sir; concerning the property; he is my agent and I depend upon him.

Q. Now, you say that you paid Medford & Waldron nearly four thousand dollars for building those four houses on the Prior property, did you not?

Mr. McINTIRE: She did not say that.

Mr. HENKLE: Oh, well.

315 A. Yes; but I did not say that, though. I told you that I paid them thirty-three hundred dollars. You have it wrong there. I said the houses cost nearly four thousand dollars when the party walls were paid for, &c.

Q. But you paid them thirty-three hundred dollars?

A. Yes, sir.

Q. How did you pay them that thirty-three hundred dollars—in money or by checks?

A. In money.

Q. Did you pay it or did Mr. McIntire pay it?

A. I took the money to his office and he paid it to the builders.

Q. Where did you get this thirty-three hundred dollars from to pay it?

A. Well, I saved it from time to time; when I got it out of the notes I put the money together and it accumulated.

Q. Where were you keeping this thirty-three hundred dollars all the time—in the house or in bank?

A. Some of that money, I told you, my sister had in her account in the bank. I gave her some of my money to put in her bank.

Q. Did she draw out any money to give you with which to pay Medford & Waldron?

A. When I want money she draws the money out and gives it to me.

Q. When you paid Medford & Waldron did you call upon her for any money?

A. I rather think I did.

Q. Then she would go to the bank and draw it out?

316 A. Yes.

Q. What bank did she deposit in?

A. In a national bank on 7th street; one of the national banks.

Q. Do you not know the name of the bank?

A. I forget the name of the bank.

Mr. HENKLE: On which side of the street?

WITNESS: Well, it is on 7th street——

Mr. HENKLE (interposing): Opposite the Post Office?

WITNESS: Somewhere near F street, on the east side of 7th street.

Mr. MCINTIRE: The Second National bank?

A. Yes.

Q. That is where your sister had her accounts?

A. Yes.

Q. When you paid this bill of Medford & Waldron you called upon her for the money and she drew it out of the bank?

A. Yes.

Q. In what sums did you pay Medford & Waldron?

A. I gave it to my brother, and he paid it.

Q. In what sums did you give it to your brother—that is, one thousand dollars at a time?

A. I cannot remember just now.

Q. Cannot you remember whether you gave him one hundred dollars or one thousand dollars at a time?

317 A. Really I cannot remember. I cannot call it to mind. It has been some years ago, and I have had some other transactions with him since, and this has escaped my memory.

Q. Cannot you call to mind whether you paid him the full sum of thirty-three hundred dollars at one time and allowed him to distribute it as the bills were presented?

A. No; I do not think I did it that way, because that would have been a large amount to take out of the bank at once.

Q. Was it taken out in large amounts or did you call upon your sister for it in large sums?

A. Whenever I wanted anything she would draw out one thou-

sand dollars or five hundred dollars or whatever amount I wanted to use for anything.

Q. Would she give you a check for it or draw it out herself?

A. She would give me the cash.

Q. She would go to the bank and draw out the money and then would come home and give you the money?

A. Yes.

Q. Would you go to the bank with her?

A. Yes, often; and she would give me the money in the bank.

Q. In these particular cases?

A. Yes; when I got a large amount I would go with her.

Q. And then you would give it to your brother?

A. Yes.

Q. Would you get a receipt from your brother?

A. His books would be enough receipt for me.

Q. You had yourself nothing to show?

A. No.

318 Q. Did you ever take any receipts from your brother for moneys paid him?

A. Yes, sir; but not in connection with those buildings.

Q. In what cases did you take receipts from him, or have you any receipts from him?

A. No; not with me, and I do not know whether I have any at home or not.

Q. Can you remember any one case in which you took receipts?

A. When he got notes from me he gave me a receipt for the money I gave him.

Q. Did he get many notes from you?

A. Yes, sir—that is, he bought a good many notes for me, and he gave me receipts when I paid him money for them. I do not know whether I have any receipts or not.

Q. I wish you would look and see if you have one, and, if you find any, will you produce it at the next session?

A. Yes; I can look, but I gave him all the papers I had.

Q. If you took receipts from your brother for money you paid him for notes, why did you not take receipts from him when you paid him moneys for the building of houses?

A. Because he put that down in his book and these others he did not put in his book.

Mr. MCINTIRE: Here is a receipt.

WITNESS: This is one of the receipts which my brother just handed me.

Q. This is one of the receipts you have from your brother?

A. Yes; I do not know whether he has any more or not;

319 I gave him all the papers that I thought was of any use.

Mr. MACKEY: This is a receipt given in Philadelphia. It is not a receipt for money at all, but is a receipt for notes.

Mr. BOARMAN: It is for money, too.

WITNESS: It is a receipt for money, too.

Mr. MACKEY: Yes; I am mistaken. I offer this in evidence for

the purpose only of showing the character of a paper produced by the witness as a receipt from her brother and not as evidence of any other matter or thing.

Mr. HENKLE: Produced at your request.

(NOTE.—And the same is herewith filed in evidence and marked "Exhibit A. H. No. 22.")

Mr. MCINTIRE: Here is another receipt, Gen. Henkle.

Mr. HENKLE: Well, here is another one.

Q. Is this another receipt?

A. Yes, sir; that is another one.

Mr. MACKEY: I offer this in evidence for the purpose only of showing the character of a paper produced by the witness as a receipt from her brother and not as evidence of any other matter or thing.

Mr. HENKLE: Produced at your request.

(NOTE.—And the same is herewith filed in evidence and
320 marked "Exhibit A. H. No. 23.")

Q. Have you any other receipts?

A. I do not know whether I have or not.

Mr. HENKLE: Have you any more, Mr. McIntire?

Mr. MCINTIRE: No, sir.

Q. Those two papers which you handed me a moment ago (Exhibits A. H. No. 22 & 23) are papers which were handed you just a moment ago by your brother, were they not?

A. Yes.

Q. They were not in your possession?

A. They were in my possession at one time.

Q. They were in his possession when he handed them out here?

A. Yes.

Q. How long have they been in his possession?

A. I do not think only since this case began. I gathered up all the papers and gave them to him.

Q. So, then, you have not any receipts at all? Whatever receipts you did have you handed over to him since this case was commenced?

A. Yes; pertaining to this case.

Q. The papers and everything pertaining to this case you handed over to your brother since this case commenced?

A. Yes.

Q. And you have not anything at all, now, have you?

A. No, sir.

Q. Did you ever call on your brother, Edwin A. McIntire,
321 for an account of the disbursements made by him for you in relation to these houses?

A. I have been there and looked over his books. He set everything down in his books. I did not want to lumber up myself with papers that way.

Q. Now, you say that your brother kept your money in the Ger-

man-American bank, at the corner of Seventh and F streets. Which brother do you mean kept your money there?

A. Both of my brothers. This gentleman (pointing to her brother, Edwin A. McIntire) and Laura Galliher's father.

Q. When was it that they were keeping money in the German-American bank for you?

A. As trustees; when I was in Philadelphia.

Q. After you came here did they continue to keep your money in the bank there?

A. No.

Q. It was drawn out, was it?

A. Laura Galliher's father died before I came to Washington to live.

Q. That money in the German-American bank was drawn out by your two brothers, was it?

A. Yes.

Q. Was it paid over to you?

A. It was invested. They bought notes with it.

Q. They never gave you the money?

A. They invested it. I got the interest on the notes.

Q. You merely got the notes?

A. Yes.

322 Q. In other words, they drew the money out of the bank and invested it for you in buying notes and gave you the notes?

A. Yes, sir; and when those notes were paid off I got other notes. I got large interest on short time, and then the money was rolled over and over.

Q. Did you see the parties who made those notes, or did you leave that to your brother?

A. I left that to my two brothers. I trusted it altogether to them. I trusted them entirely. I knew that they were honest men and would not deceive me in any way.

Q. When you bought the Pryor property first did you make the bargain with Thomas Pryor or did your brother make it?

A. My brother, Edwin A. McIntire, made it.

Q. Did you see Thomas Pryor at all?

A. I never saw him at all.

Q. You said in your testimony that when you found that the property was so covered with taxes you would not take it. How did you find that out?

A. My brother, Edwin A. McIntire, told me.

Q. Then what became of the deed that they made to you?

A. I do not know. I did not think it of any account, for I did not pay much for it.

Q. Did you ever see the deed yourself?

A. I do not remember much about it. I did not think it was of any account, and I did not pay any attention to it when I saw that there was so much money to be paid.

Q. Did you see the deed when it was first executed?

A. Yes, sir; or I would not have known anything about it.

Q. Did you see the deed immediately after it was executed?
323 A. Yes; I think I did, to the best of my recollection.
Q. At your brother's office?
A. Yes, sir; that is where I used to see papers, at the office of my brother, Edwin A. McIntire.
Q. You say that they kept your money in the German-American bank. Do you know that of your own knowledge or from just what they told you?
A. What my brothers told me.
Q. I asked you at your last examination how long you supposed you were employed at book-stitching.
A. I do not remember how many years.
Q. I asked you if you would find out. Have you made any effort to find out?
A. I forgot all about it.
Q. Do you think you could find out how long you were employed at book-stitching and with whom?
A. No, sir; I do not think I could find out. I forget the year I went there.
Q. Were you thus employed as long as five years?
A. Oh, yes; ten or twelve years.
Q. At one place?
A. No, sir; with different firms, at different places.
Q. You say that you sent money to your brother from Philadelphia when you were in Philadelphia?
A. Yes.
Q. To your brother here in Washington?
A. Yes.
Q. How did you send it?
A. Sent it through the bank.
324 Q. Have you any papers or memoranda to show?
A. I showed you two awhile ago.
Q. These papers (Exhibits A. H. No. 22 & 23) are receipts for money that you sent to your brother from Philadelphia?
A. Yes.
Q. Is that all you ever sent him from Philadelphia?
A. No.
Q. More?
A. Yes; more than that. I sent money at different times.
Q. How much do you suppose you sent him in all from Philadelphia?
A. I do not remember how much. I sent it in different amounts, but I do not remember how much.
Q. Now, you say that you deposited money in a Philadelphia savings bank, that you drew it out about six years ago, and that it amounted to about three or four thousand dollars. Have you your bank book with which you deposited in that bank?
A. Why, no; they always take the bank book when you give it up. That is customary, I thought; anyhow they took mine.
Q. Have you the checks which were returned to you?

A. That was a savings-fund bank. They do not have checks in a savings-fund bank.

Q. So, then, you have not any checks?

A. No.

Q. How would you draw out money from the bank?

A. Just hand your book up.

Q. You have not a single thing to show?

A. No, sir; nothing at all to show. When you left your book there they gave you a card, or they used to do that.

325 Q. Have you any objection to the bank furnishing the examiner here with a statement of your account there?

A. Certainly not. You can send for it any time you choose.

Mr. MACKEY: I would like to have it produced.

Mr. MCINTIRE: At your expense.

Mr. MACKEY: The bank would not give it to me without the consent of the depositor.

Mr. HENKLE: We consent to it.

Q. What bank was that?

A. The Philadelphia savings fund.

Q. Having its office at the corner of Seventh and Walnut streets?

A. Yes.

Q. The bank of which Mr. Caleb Cope was president?

A. Yes.

Q. How much money did you lend to Mr. Partello from time to time?

A. I do not remember.

Q. You do not know how much. Have you any idea?

A. Twenty-five hundred dollars or something like that.

Q. What Mr. Partello is he?

A. William Z. Partello.

Q. He is living, is he not?

A. Yes.

Mr. MCINTIRE: At the Hot Springs, Arkansas.

326 Q. Inasmuch as you have just stated that you gave your brother all memoranda relating to this case, I suppose you have no memoranda showing when you gave him any moneys to invest in the Partello notes?

A. No, sir; I have nothing to show that.

Mr. MCINTIRE: She did not say that she gave me such memoranda.

WITNESS: I did not say that I gave him that memoranda.

Q. What sister was it to whom you gave money to deposit in bank for you?

A. Emma T. McIntire.

Q. You said at your last examination that you had a memorandum on a slip of paper of the amounts you gave your brother, Edwin A. McIntire. Have you that memorandum now?

A. I do not remember telling you that.

Q. In your testimony, at page 212 of the record of the defendants' evidence in this case, in response to this question of mine, "Did he give you any receipt or acknowledgment that he had that

much money from you?" you answered, "I had some account, a memorandum I would call it, on a slip of paper of what I gave him." Do you remember making that statement?

A. I do not remember saying that, but if I had such a memorandum I must have destroyed it.

Q. Have you any with you?

A. No.

Q. Have you any at home?

A. Not that I can recall to mind.

327 Q. Can you recall to mind making any such memorandum?

A. No, sir.

Mr. McINTIRE: You read only part of her testimony there, Mr. Mackey; if you will read what is just previous to that I think she will understand you.

Q. (Reading:) "You gave him six thousand and odd dollars, so much cash, and told him to buy notes for you or do whatever he pleased with it for you?" (A.) "I gave it to him to invest for me." (Q.) "Did he give you any receipt or acknowledgment that he had that much money from you?" (A.) "I had some account, a memorandum I would call it, on a slip of paper of what I gave him." Well, now, do you remember ever making any such memorandum as that?

A. I might have had it at one time, but I do not remember. I very often made memoranda and destroyed them soon afterwards, as I did not think they amounted to anything and never would be wanted.

Q. If you ever had such a memorandum you have destroyed it?

A. Yes, sir.

Q. Did you ever give to your brother, Edwin A. McIntire, money to deposit for you since you have been in Washington?

A. No.

Q. You gave it all to your sister?

A. Yes.

Q. And none to Edwin A. McIntire?

A. No, sir; none for him to deposit.

328 Q. Now, you say that you had money in a safe-deposit company here. Do you remember the name of that safe-deposit company?

A. I have it in two safe-deposit companies here.

Q. Have you the receipt for your box?

WITNESS: For the payment of the box rent?

Mr. MACKEY: Yes.

A. Why, yes.

Q. The date when it was first rented?

A. No; not when first rented; I pay every year.

Q. You know how they pay for every year?

A. It is not that kind of a receipt.

Q. Well, that is the receipt that you got for the first rent you ever paid?

A. Well, I do not know whether I have it or not.

Q. Have you any objection to the officers of that bank giving us a statement of the date when you first rented and how long you rented the box?

A. No, sir; if they choose to do so, I do not care myself.

WITNESS: You went down there and enquired, did you not, Mr. Mackey?

Mr. MACKEY: Yes; I was there twice.

WITNESS: Did they tell you anything?

Mr. MACKEY: No; of course, they would not.

Q. Did you keep much money in your safe-deposit boxes?

A. I just put there what I chose to put there. I do not
329 know that I ought to answer that question; that is really my own business, as to what I choose to put there.

Mr. MACKEY: But it becomes our business in this case.

WITNESS: Well, I do not know; I do not think I have a right to answer that question. Have I a right, Gen. Henkle, to answer that question, as to how much I have in my safe-deposit box?

Mr. HENKLE: No; I do not think you are obliged to answer it.

WITNESS: I do not think I will answer it.

Q. You had money, then, on deposit in the Second National bank to the credit of your sister, you had money in both of these safe-deposit companies, and you had money at home, did you?

A. Yes.

Q. Did you keep large amounts of money at home?

A. No, sir; not now; I do not.

Q. Well, did you about the time of these transactions with Emma Taylor?

A. Well, I do not know; I might have at that time.

Q. Did you or not?

A. I cannot remember everything.

Q. Do you remember keeping in your house for a week at a time sums of money as large as one thousand dollars?

A. Yes, sir; I remember that I did, and I was fearful that I would lose it.

Q. Was it larger than one thousand dollars?

330 A. Yes, sir; somewhat over one thousand dollars, I reckon.

Q. Fifteen hundred dollars?

A. Yes.

Q. More than fifteen hundred dollars?

A. I think I will stop now.

Q. You will not venture to say that it was more than fifteen hundred dollars?

A. I will not answer any more, Mr. Mackey.

Mr. MACKEY: We are here to cross-examine you, Miss McIntire, and we want to know all about it.

WITNESS: I think you are getting out all about my affairs.

Q. You will not say whether it was over fifteen hundred dollars or not?

A. No, sir; and I do not think it is worth while to say anything more about it.

Q. Do you refuse to answer any further?

A. I think I have answered all in reason.

Mr. MACKEY: I am not asking from curiosity.

WITNESS: It looks like it, indeed.

Q. Will you state whether you had over fifteen hundred dollars at home at any one time for a week?

A. Yes, sir; I have had that and I think over that for over a week.

Q. How much over that?

A. I do not know.

Q. Two thousand dollars.

331 A. I do not know whether I had two thousand dollars at one time or not.

Q. Well, did you have that more than once?

A. Yes, sir; more than once.

Q. How much more than once?

A. I do not know. I think that is about all. I will say once.

Q. Well, is it the fact that it was once?

A. Well, I cannot remember.

Q. You cannot remember whether you ever had at your house more than two thousand dollars of your money?

A. You ask me too many questions. I cannot remember.

Mr. HENKLE: The witness has already said that she had more than fifteen hundred dollars at one time, but she does not remember that she had more at any other time or not.

Q. How much money did you have with your sister, Emma T. McIntire, in bank?

A. I do not know. I cannot remember how much.

Q. Did you ever get any receipt or anything from her to show what you had?

A. No; I gave her the money.

Q. And she put it in bank?

A. Yes, sir; and she noted it down. She knew what I gave her and I knew what I gave her.

Q. You would give it to her at different times?

A. Certainly.

Q. And it would run through a long time?

A Yes; sometimes it would and sometimes it would not,

332 for I would take it out.

Q. And you carried all that in your head?

A. I set it down.

Q. Have you the paper you set it down on?

A. I might have had at one time. I do not know.

Q. Was it on a piece of paper or in a book?

A. On a piece of paper.

Q. Is that one of the papers which you turned over to your brother?

A. No.

Q. So you have that paper now?
A. I did have it, but I do not know where it is now.

Mr. MACKEY: I wish you would make search for it and, if you find it, give it to Gen. Henkle.

Q. How much did you have with your sister in the Second National bank?
A. I do not know.
Q. Did she have a deposit in any other bank?
A. No; she deposits in that bank.
Q. So that those are the only four places you had money in—that is, you had money in two different safe deposit companies?
A. Yes.
Q. And in the bank with your sister and at home you would have money sometimes?
A. Yes.
Q. But how much you had in the safe deposit bank or how much you had with your sister you are unable to state?
A. Yes.

333 Q. Now, you signed that contract (Exhibit A. H. No. 18) with Medford & Waldron?
A. Yes, sir; that is my signature.
Q. Did you see Medford & Waldron sign that contract?
A. No, sir; I did not see them.
Q. Did you see your sister sign it?
A. No, sir; I did not see her either sign her signature.
WITNESS: My sister?
Mr. MACKEY: Your sister, Emma T. McIntire.
WITNESS: That is her signature.
Q. Were you present when those two witnesses to this contract put their names there?
WITNESS: What were the witnesses to?
Mr. MACKEY: The people who witnessed this contract.
A. I did not see them sign it.
Q. Were you present when the contract was signed?
A. No, sir; I did not see any of them sign it.
Q. You might have been in the room and not see them sign it. Were you in the room or anywhere about?
A. No.
Q. It was signed and brought up to you afterwards?
A. Yes.
Q. Where did you sign it?
A. At my brother's office, I think.
Q. Afterwards or before?

334 A. Really I do not remember when I did sign it, but that is my signature.
Q. You do not know when nor where you signed it?
A. No, sir; I remember signing it in the office.
Q. Do you remember about the paper at all?
A. Yes.
Q. Did you read it?

A. Yes.

Q. When?

A. Before I signed it, because there were some things in it I did not like.

Q. Were Edwin A. McIntire and Emma T. McIntire in the office at the time you signed it?

A. Well, my brother was there. I do not remember about Emma T. McIntire being there or not, but that is her signature.

Redirect examination.

By Mr. HENKLE:

Q. I want to ask you a few questions. I do not know that I quite understand your testimony with regard to the notes that you had of Partello. In your testimony (at page 196 of the record of the defendants' evidence) you say, "How much did you have in Partello's notes?" (A.) "I think I had five thousand dollars in one of his notes, and I think I have another one of his notes amounting to twenty-five hundred dollars." (Q.) "That is seventy-five hundred dollars?" (A.) "Yes, sir; I had three of his notes on the P-street property." (Q.) "At different times?" (A.) "All pretty much about the same time." (Q.) "What do you mean by all
335 pretty much about the same time?" (A.) "Nearly all about the same time—the same week, then." (Q.) "Where did you keep your money that you invested—— (Mr. HENKLE, interposing:) "You had three notes, you say; how much was the other one?" (WITNESS:) "I think I had two for $2,500 each and one for $5,000. I had the Roberts notes, too." (Q.) "Were those separate sums you loaned him at different times, making ten thousand dollars that you loaned him altogether at one time?" (A.) "I loaned it to him at different times." (Q.) "That is, you loaned him twenty-five hundred dollars at one time and before he paid you back that amount you would give him another sum?" (A.) "No, sir." (Q.) "You say at one time he had from you as much as, $10,000?" (A.) "Yes, sir; on those houses." (Q.) "That is, at one time Partello owed you as much as ten thousand dollars?" (A.) "Yes, sir."

Now, Miss McIntire, is that the way you wish to be understood about that matter?

A. Yes, sir.

Q. You were speaking this afternoon about having Mr. Partello's note for twenty-five hundred dollars. I did not know whether that note had been renewed several times or whether you had loaned him the gross sum of ten thousand dollars. Then you wish to be understood as saying that Mr. Partello at one time owed you as much as ten thousand dollars?

A. Yes, sir.

Q. I understand that you have his notes amounting to ten thousand dollars?

A. Yes, sir.

Mr. HENKLE: This afternoon, from the answer you made
336 to Mr. Mackey about having Mr. Partello's note for twenty-five hundred dollars, I did not know but that there might be some confusion about it.

Q. Where did you get these notes; from your brother?

A. From my brother, Edwin A. McIntire.

Q. Did you or not have any direct communication with Mr. Partello in regard to them?

A. No, sir.

Q. Do you know whether or not Mr. Partello knew that you held those notes?

A. I do not think that he did. I do not know.

Q. I want to ask you a question or two in regard to your niece, Mrs. Galliher, who has testified with some animus in this and other cases. What is the state of feeling between you and your niece, Mrs. Galliher—that is, what is her feeling towards you?

A. See seems to be very angry towards us about something; I do not know what.

Q. Has there been any matter of trouble between you?

A. Ever since Uncle David's death she had been acting ugly towards us. She instituted all of these lawsuits.

Q. You think she is the cause of them all?

A. Yes, sir.

Q. And of the contest of the will?

A. Yes, sir.

Q. What sort of a spirit has she exhibited to you and towards the rest of your family?

A. Very ugly and spiteful, and all because, I think, her name not being mentioned in the will.

337 Q. When you say all these suits what do you mean?

A. All these suits.

Q. You think all of these suits?

A. The whole set of them. She is at the bottom of all of them.

Q. I want to know when you first heard that Mrs. Pryor claimed your property.

A. Not until there was a fuss about the property. I did not know about it until then.

Q. You mean not until this suit was brought up?

A. Yes, sir; I did not know anything at all about it.

Q. Had you never heard from any source about it?

A. No, sir; I did not even know that there was a Mrs. Pryor.

Q. You did not know that anybody made any claim to that property?

A. No, sir; I thought I was in undisputed possession of it.

Q. With a good title?

A. With a good title. I thought I had a doubly good title, after paying one hundred dollars for a quitclaim and having sent it to Minnesota to get Mrs. Jenison's signature to it.

Q. Did Mr. Medford, one of your builders, tell you that a colored woman claimed to own that property when he commenced to build there?

A. No, sir; he never told me anything about it.
Q. You never heard anything about it?
A. No, sir.
Q. Nobody else told you?
A. Nobody else told me.

Q. And your possession has been undisputed and undis-
338 turbed up to the bringing of this suit, so far as you know?

A. So far as I know. I have not heard anything about it.
Q. Who has received the rents and enjoyed them?
A. I have received the rents.
Q. What interest has your brother in them?
A. No interest at all in them. He just acts as my agent.
Q. You pay him for his services?
A. No, sir; I do not pay him. I offered him pay, but he would not take it. I asked him to take it out from time to time, but he will not do it.
Q. He does it as your friend and agent and brother?
A. Yes, sir.
Q. I want to know whether your niece, Mrs. Galliher, at any time proposed to borrow money from you.
A. Well, she wanted me to lend her husband's brother some money to open a grocery store; and if she thought I was as poor as she has stated I am she would not have thought that I had money enough to open a grocery store.

Mr. MACKEY: Question and answer objected to as being utterly irrelevant to this case and relating to matter between other parties.

Q. How much money did she want you to lend her brother-in-law?
A. Why, all I could scrape together; no particular sum; several hundred she mentioned for his brother to start a grocery store.

Q. When was that?
339 A. I think in 1878. She was sick at one time and I stayed there three months, but she did not pay me for it except my fare from Philadelphia to Washington and Washington back to Philadelphia, and if she thought I was so poor as she has testified I was she would not have acted so mean as she did.

Mr. MACKEY: Objected to as irrelevant and argumentative on the part of the witness.

Q. You say that you turned over to your brother since the commencement of this suit all the papers you had. Now, what papers were they which you turned over to him; any other papers than these you have produced here today?
A. Yes, sir; I think he has some more. I gave him all the papers I thought of any account.
Q. Were the other papers deeds?
A. Yes, sir; he has all the deeds.
Q. Any other receipts or memoranda of the payment of money or anything of that kind?
A. I do not remember whether he has any more or not. He

knows that. I gave him all the papers of any account some time ago.

Q. Did you ever give him any memorandum about the Partello notes?

A. I do not know. I think he has a memorandum of them. I cannot say positively.

Q. Mr. Mackey asked you about where you kept your moneys, and you spoke about having kept them in two safe deposit companies, among others. Were those at the same time or at different times?

340 A. At different times.

Q. You did not keep boxes at two different safe-deposit companies at the same time?

A. No, sir; not at the same time.

Mr. HENKLE: I do not think of anything else just now to ask this witness, but before we conclude this case I may want to call her.

Mr. MACKEY: Is this testimony only in the Pryor case?

Mr. HENKLE: Only in the Pryor case, as I understand.

Recross-examination.

By Mr. MACKEY:

Q. Did you ever see the deed from Emma Taylor to you of the Southey and Pryor properties, both being conveyed in one deed, dated May 31, 1884, and marked "Exhibit A. H. No. 14"?

WITNESS: Why, this is the deed from Emma Taylor to me.

Mr. MACKEY: Yes; I asked you if you ever saw it.

A. Yes, sir; I saw this deed.

Q. Did you see Emma Taylor execute it?

A. No, sir; I did not see her sign it.

Q. When did you first see the deed after you bought the property?

A. I do not know how long afterwards. I know it was given to me after I bought the property.

Q. Immediately afterwards?

A. I suppose it took a suitable time to attend to the busi-

341 nes- before the deed was handed to me.

Q. A week afterwards?

A. I do not remember exactly. A suitable time. I suppose the date of the deed will tell when it was done.

Q. You do not know when the deed was given to you? Did you ever have it in your possession?

A. Yes.

Q. From whom did you get it?

A. From my brother, Edwin A. McIntire.

Q. What did you do with it?

A. I kept it in his safe for a long time. I kept all my papers in his safe for a long time. Afterwards he gave me my own papers, and I kept them in my box at the safe-deposit company until this case commenced, when I took them out and gave them to him.

Q. After he gave you this deed you went down and put it in his safe?

A. I gave it to him and he put it in his safe.

Q. So he gave the deed to you and you gave it back to him?

A. It was mine. I had no safe.

Q. Soon after the execution of this deed, as I understand you to say, your brother gave it to you and then you gave it back to your brother?

A. For safe keeping.

Q. Immediately afterwards?

A. As soon as I saw that everything was right.

Q. You kept the deed and looked at it?

A. I had it at home for a while.

Q. What do you call "a while"?

342 A. Maybe a week or two.

Q. And then you gave it back to him?

A. For safe keeping.

Q. And then he kept it?

A. And then he kept it for me.

Q. And you never saw it until when?

A. Until I took the papers and put them in my box at the safe-deposit company.

Q. Then you went to his office and got it and put it in that box?

A. Yes.

Q. You say you received the rents of this property?

WITNESS: You mean the F-street property?

Mr. MACKEY: Of this Pryor property.

A. Well, the F-street property, I call it; yes, sir; I get the rents.

Q. Who collects them?

A. My brother, Edwin A. McIntire.

Q. And he pays them over to you?

A. Yes.

Q. That is the way you mean you collect the rents?

A. Yes, sir; he pays them over to me.

Q. Now, you say that Mrs. Galliher has unkind feelings towards you and that she started up these lawsuits?

A. Yes.

Q. Do you refer to the two suits of William E. McIntire *vs.* Edwin A. McIntire *et al.*, in equity, No. 10745 and 10746?

343 A. All of them.

Q. All of the suits ever brought against Edwin A. McIntire?

A. Ever since Uncle David's death. She is the cause of all of them.

Q. What relation is William E. McIntire to you?

A. He is Laura Galliher's brother and therefore he is my nephew.

Q. And he brought two suits against your brother, Edwin A. McIntire?

A. Through Laura Galliher. He was always peaceable enough.

Q. He charged your brother, Edwin A. McIntire, with making away with his property?

A. Yes, sir; all through Laura Galliher.

Q. They were brought at the instigation of his sister, Laura Galliher?

A. Yes.

Q. And those suits charged your brother, Edwin A. McIntire, with selling the real estate belonging to William E. McIntire to Emma Taylor also, did they not?

A. Indeed I do not know.

Q. And then there was the suit in the orphans' court?

A. Indeed I do not know where it was.

Q. Being the contest over the will?

A. Yes, sir; Uncle David's will.

Q. In which Charles McIntire also brought suit against your brother, Edwin A. McIntire?

A. Yes, sir; with Mrs. Galliher, against all of the heirs.

Q. To set aside the will?

A. Yes.

344 Q. That case being No. 1532 in the orphans' court of this District?

A. I do not know the number or where it is?

Q. All those suits, you say, were started up by Mrs. Galliher?

A. By Laura Galliher.

Q. Including these suits here?

A. Yes, sir; every one of them.

Q. Quite a number of the members of that branch of the McIntire family have been suing your brother, Edwin A. McIntire?

A. Through Laura Galliher.

Q. William E. McIntire charged your brother, Edwin A. McIntire, with having sold his property?

A. That is not the case; that is not the case of Uncle David's will. I do not know about that.

Q. Do you not know as a fact that William E. McIntire, the brother of Laura Galliher, has charged your brother, Edwin A. McIntire, with conveying property or getting him (William E. McIntire) to convey his property to one Emma Taylor, and that he (William E. McIntire) charges that Emma Taylor is a myth and fictitious person?

A. I do not know anything at all about it. I had nothing to do with that affair.

Q. Did you ever see the deed from Thomas Pryor and Mary C. Pryor to you?

A. Yes, sir; I have seen all those deeds.

Q. When did you see that deed?

A. Oh, I do not remember when I saw it. I suppose after I bought the property, for I would not see it before.

345 Q. This is the first deed by which the Pryor property was conveyed to you, and you threw it up because it cost so much—that is, because the taxes on the property was so heavy?

A. Yes.

Q. The deed for which you paid five dollars?

A. Yes.

Q. You remember seeing that deed?
A. Yes.
Q. When was it executed?
A. I do not remember when it was executed. I saw it down at my brother's office.
Q. How soon after it was executed did you see it at your brother's office?
A. I do not remember.
Q. Well, give us some idea—whether it was a day or a year?
A. No, sir; I cannot give any idea because I cannot remember anything at all about it.
Q. But you do remember seeing it?
A. Yes.
Q. You cannot remember when you saw it?
A. No, sir; I cannot remember when I saw it.
Q. How do you remember the fact that you saw that deed—that is, is there anything by which you identify it?
A. No, sir; not that I know of; but I remember seeing it.
Q. How do you remember seeing it or where you saw it?
A. Why, the only thing—here is Mr. Helmick, the justice of the peace, signing it, and I remember him.
Q. You remember that you saw this deed because Justice Helmick's name is to it?
346 A. Not that alone. I remember the whole paper.
Q. Where did you see it?
A. In my brother's office.
Q. You have no way of identifying the paper at all?
A. No, sir.
Q. You cannot tell where you saw it, except that you saw it at your brother's office, but when you saw it you cannot tell?
A. No, sir.

Mr. MACKEY: If this testimony is to be used solely in the case of Pryor *vs.* McIntire I have concluded the cross-examination of Miss McIntire; but if it is to be used in any of the other cases for any other purpose than to show the existence or non-existence of Emma Taylor, I shall want to further cross-examine Miss McIntire upon so much as I deem necessary in relation to the other cases.

Mr. HENKLE: It is to be understood, however, that your examination upon the question as to the source from which she got her money and the amount of her money is closed, and you do not want to open that subject again.

Mr. MACKEY: No; I do not want to open that subject again, unless you offer any further testimony by her upon that subject.

MARTHA McINTIRE.

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347 JANUARY 4, 1893.

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Amos Fouche.

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Direct examination.

By Mr. HENKLE:

Q. Mr. Fouche, where do you live?
A. No. 2099 Brightwood avenue, in the District of Columbia.
Q. What is your business?
A. I am a carpenter and builder.
Q. How long have you lived in this city?
A. Well, I have been living in this city for about eight years—that is, I work here, but my family live in Annapolis, Maryland.
Q. Do you know Mr. Edwin A. McIntire, this gentleman here?
A. Yes.
Q. How long have you known him?
A. Well, I suppose I have known him for some time; six years, I reckon—five or six years.
Q. Did you ever do any carpentry work for him?
A. Yes.
Q. Where?
348 A. I did work in five houses out here on 3rd street, and I have done a great deal of repairing for him all around through the city.
Q. Well, did you work on these houses Nos. 108 and 110 F street northwest, in this city?
A. Yes.
Q. For whom did you do that work?
A. For Messrs. Medford & Waldron. They were partners at the time.
Q. You worked on the houses when Messrs. Medford & Waldron were building them?
A. I was there when they were about finishing out. I was there and helped to hang some doors and put up the dressers in finishing off the houses. I was not there in the beginning of them. I think I worked there about a week.
Q. For whom were those house that you worked on built?
A. I understood——

Mr. MACKEY: I object to the question and any answer thereto unless the witness knows of his own knowledge.

Q. By whom did you understand the houses were owned?
A. By Mr. McIntire's sister, in Philadelphia. That was the impression I had.

Mr. MACKEY: I object to the witness's answer again, because it is plainly inadmissible, the witness stating that he only has an understanding about it, and I hereby give notice to counsel that I shall move the court to strike it out.

Q. How did you come with the understanding that they
349 belonged to Mr. McIntire's sister, in Philadelphia?

A. Now, that I do not remember. It came up in conversation with somebody down there, but who it was or how it was I do not remember. I paid very little attention to it.

Q. You got that information at the time you were working there?

A. Yes, sir; and I never bothered my head about it any more.

Q. At the time you were working there you understood there that the houses belonged to Mr. McIntire's sister, in Philadelphia?

A. That was my understanding.

Q. Do you know whether it was talked about there at the buildings or not?

Mr. MACKEY: Objected to as plainly inadmissible.

A. It was not talked about; only, I think Mr. Medford or Mr. Waldron or some one said that the property belonged to her. There was some conversation about it. I do not know how it came up. I cannot remember.

Mr. MACKEY: I object to the witness's answer, giving his understanding, as hearsay testimony.

Q. You heard it from Mr. Medford or Mr. Waldron or somebody there connected with the work?

A. Yes, sir; I think so, so far as I can remember. I paid very little attention to it because it did not concern me in any way at all.

Q. Do you know a colored woman by the name of Mary C. Pryor, who lives down there?

350 A. No; I do not know that I ever knew her or saw her. I heard her name and that is all.

Q Well, have you been at the house of a colored woman living down there by the name of Pryor within the last two weeks?

A. Yes, I was there; I passed along the alley where she lived.

Q. Do you know where she lives?

A. Yes.

Q. Did you make any examination to see whether from her front windows she could see to the front of this lot?

A. Yes, I noticed that, and, to the best of my knowledge, no person can stand on her place and see but very little over half way diagonally across that lot.

Q. Could any person hear from her front steps or windows in any conversation or voice on F street unless it was pretty loud?

Mr. MACKEY: I object to this and the previous question on the ground that an opinion from the witness is called for without showing that he is any way qualified to give an opinion in respect of the matter about which he is interrogated.

A. I do not think any person could hear unless the person that was speaking would holler very loud; that is my judgment about it.

Q. Did you measure the distance from her front windows to the front of this lot?

A. No, sir; I did not measure the distance from her house down

to the line of that lot. I judged that it was about thirty feet above the line of their lot.

Q. Well, where was this measurement of thirty feet that
351 you speak of?

A. I judged it was from the line of the lot that the house was built on—that is, from that line it was thirty feet where her house stands. I did not measure it.

Q. How far from there to the front of where her house stands—that is, to the F-street front?

A. Somewheres near about one hundred feet.

Q. Then it would have been one hundred and thirty feet from her house to the F-street front?

A. Not in a straight line. I do not think it would have been one hundred and thirty feet in a straight line.

Mr. MACKEY: I must continue my objection to this line of testimony, as calling for the opinion of the witness in a matter which is capable of being demonstrated by measurement.

Q. I show you a paper which purports to be a diagram of the premises and grounds there. Will you please look at it and see if you understand it?

A. I understand it.

Q. Here is F street; what is this?

A. Here is the alley, and here is where the house stands that Mrs. Pryor lives in.

Q. There is First street?

A. Yes.

Q. Is this diagram a correct representation of the premises and ground there?

A. Yes, sir; as correct a diagram as you can get unless you go and measure it and lay it off by a rule.

352 Mr. MACKEY: If this is a diagram of the premises as they now stand, I object to it. If it is a diagram of the premises, of the lot and vicinity, as they stood at the time these buildings were erected, I object on the ground that it is not shown in any way to be a correct diagram.

Mr. HENKLE: Well, I am asking the witness about that.

Q. You are familiar with this locality and these premises, are you?

A. Well, I am tolerably familiar with them. I worked there and I knew how the houses stood.

Q. You knew how they were at that time and how they are now?

A. Yes.

Q. This is a correct diagram of the premises and the surroundings as they are at the present time?

A. Yes, sir; it looks just as correct as can be.

Q. Well, what change has there been made from that time—that is, from the time before these houses Nos. 108 and 110 were built and since they were built?

A. None that I know of, only these houses being built.

Q. Well, now, on the rear part of this lot which is marked "Mrs. Johnson," what was there on the alley there; was there a high fence there?

Mr. MACKEY: Objected to as leading.

A. I do not recollect.

Q. Well, now, Mrs. Pryor's house was across the alley opposite to the rear end of Mrs. Johnson's premises?

353 A. Stands a little above it, about thirty or thirty-five feet from the line of this lot here up to her house. Take the line from here (indicating) from her house diagonally across there. This house (indicating) cut her view off—that is, this back building of Mrs. Johnson cut her view off from seeing over to F street.

Q. From her front windows she could not have seen to the front of Nos. 108 and 110 F street because of the obstruction of the rear end of Mrs. Johnson's house?

A. That is just it exactly.

Q. What was about the distance from her front windows to the front of this F-street lot?

WITNESS: I do not know the depth of the lot.

Mr. HENKLE: It is marked on this diagram one hundred feet.

A. Well, I should judge—well, she would have to see beyond this side of the alley, up one hundred and twenty feet, and then diagonally across, going a little over.

Q. You say that she could not from her front windows have seen more than half way?

A. Very little over half way, if any. That is my judgment about it. I stood and looked across there from the street. I did not go up the steps, and I could not see across F street.

Mr. HENKLE: I here give this diagram in evidence.

Mr. MACKEY: To the admission of which I object on the ground heretofore stated.

(NOTE.—And the same is herewith filed in evidence and
354 marked "Exhibit A. H. No. 24.")

Cross-examination.

By Mr. MACKEY:

Q. What sort of a house was on the west side of No. 110 F street at the time of the building of those houses?

A. I do not know. I never noticed what kind of a house was there or whose house was there.

Q. Was there a house there?

A. That I do not remember. I did not pay any attention to that.

Q. How old a man are you?

A. I am sixty-six years old.

Q. What did you say your business is?

A. House carpenter.

Q. You have never done anything else?

A. No, sir; I never followed anything else in my life, and I have been at that since I was 15 years old.

Q. You work, you say, a great deal for Mr. McIntire?

A. Yes; I have done a good deal of jobbing work for him and I built him five new houses.

Q. How long since you built those houses?

A. Three or four years ago.

Q. Have you done work since then for him?

A. I am doing some jobbing work for him now in repairing houses.

Q. Now, you say, from Mrs. Pryor's house to across the street was thirty feet. Across the alley, do you mean?

355 A. Yes, sir; the alley is twenty feet wide.

Q. You say it was thirty feet from Mrs. Pryor's house to where?

A. To a straight line through from the F-street front of that lot to the houses, Nos. 108 and 110. I did not measure it, but I judged that it was that, from the straight line of that lot up to her house.

Q. You say you do not know what sort of a house that is alongside of No. 110 F street?

A. No, sir.

Q. Do you know whether there is a house there or not?

A. No, sir; I do not. I never took any notice of it. I know there is a house up on this side of Nos. 108 and 110. The back building of that house—Mrs. Johnson's I believe it is—cuts off the view from Mrs. Pryor's house across to F street.

Q. Which house cuts off the view?

A. The back building of Mrs. Johnson's house.

Q. Where is Mrs. Johnson's house?

A. Right next door to No. 108 or No. 110, whichever it is.

Q. It is next door to one of those houses?

A. Yes, sir.

AMOS FOUCHE.

* * * * * * *

356 *Edwin A. McIntire.*

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Direct examination.

By Mr. HENKLE:

Q. You are one of the defendants in this case?

A. I am.

Q. Do you know Mrs. Pryor, the complainant in this case?

A. I do.

Q. How long have you known her?

A. I have known her by sight for some several years. I never spoke to her but once.

Q. Will you begin in your own way, Mr. McIntire, and give the history of your connection with this Pryor property from the beginning?

A. On or about the second of May, 1880, Mr. Thomas Pryor, the husband of the complainant in this case, came to me at my office on F street between 9th and 10th streets northwest, and requested me to negotiate a loan for him upon the property described in the bill in this case. Accordingly, I prepared a deed of trust for four hundred and fifty dollars, which trust was duly executed and recorded, the note being payable to Hartwell Jenison, chief of the loan division, in the Treasury Department.

Q. Mr. McIntire, was that the first of the loan?

A. There was a prior loan of five hundred dollars, with which I had nothing whatever to do. This loan which Mr. Pryor
357 negotiated with me on the 2nd of May, 1880, was to take up that prior loan, which loan was held by Mr. Johnson.

Q. Will you be kind enough to say who were the trustees in that antecedent loan?

A. Mr. B. H. Warner and, I think, my brother, but I am not certain as to my brother.

Q. You mean your brother Henry McIntire?

A. Yes; I think he was one of the trustees; but Mr. Warner was one of them I know.

Q. Was your brother Henry living at the time of the new loan?

A. No, sir; he was not living at the time of the new loan. He was one of the trustees, I think, in the first loan.

Q. You had nothing to do with the negotiation of that first loan?

A. I knew nothing of the first loan until Mr. Pryor came to me to negotiate another loan to take it up.

Q. Do you know whether payment was being demanded or what instigated Mr. Pryor to come to you and negotiate a new loan to take up the antecedent loan?

A. I believe the note fell due. That is my impression.

Q. Well, now, he came to you to raise money upon the property to meet that note?

A. Yes.

Q. Well, now, will you proceed with your narrative?

A. And I negotiated the four-hundred-and-fifty-dollar loan.

Q. With Mr. Jenison?

A. No; I made arrangements with Mr. Jenison, who loaned him the money, substituting the note of four hundred and fifty dollars for the five-hundred-dollar note. How the balance was
358 made up I have forgotten. About the third of May, 1881, Thomas Pryor came to me and said that he could not pay this four-hundred-and-fifty-dollar note and asked me whether I could get a purchaser of the property who would take it off his hands and assume the encumbrance and taxes. He represented the taxes to be twenty or thirty dollars. I had correspondence with my sister, Martha McIntire, at that time and suggested to her that it might be a good chance for her to make an investment, and I had the deed made to her, with her consent, the consideration being five dollars, she to assume the encumbrance and to give Thomas Pryor a lease on the property for a year, so that he could carry on

his wood and coal business, in which he was then engaged in a small way. The lease was made on May 4, 1881, the day after the deed to her. Within a very short time after that I ascertained at the tax office that the taxes instead of being twenty or thirty dollars were ten times that amount, and I reported the same to my sister. She thereupon declined to pay that additional amount of taxes and the property went for sale.

Q. When she agreed to take it for the consideration of five dollars was the deed made to her?

A. Yes, sir; a deed was made to her.

Q. And was that deed delivered to her or retained by you?

A. It was delivered to her.

Q. Do you know whether that deed was put on record at the time or not?

A. I am not certain. That deed is filed as an exhibit in this cause.

359 Mr. HENKLE: I think it was not recorded.

Mr. MACKEY: It never was recorded.

WITNESS: That is my impression, but I would not say positively.

Q. So that deed was not recorded?

A. I think not. She declined to take the property, after a little delay in looking to the matter of taxes. It was not very long after the deed was delivered to her when I ascertained in regard to the taxes; possibly not more than a few days.

Q. Then when that came to her knowledge, that the taxes were so much more than she had supposed or had been informed they were, she declined to take it?

A. She declined to take it.

Q. And treated the matter as off?

A. Yes.

Q. Now, Mr. McIntire, will you please proceed on with your narrative of this matter?

A. Mr. Jenison shortly after this lease was made reported to me that the note was due and unpaid and gave me written authority to advertise the property at public sale.

Q. Have you that authority?

A. That authority is filed here as an Exhibit A. H. No. 4.

Q. Is it in evidence?

A. Yes, sir; I advertised the property in regular form, and in a day or so before the sale Mr. Jenison came to me and told me he could not be present at the sale, and he asked me whether I would see him protected——

360 Mr. MACKEY (interposing): I object to what Mr. Jenison told the witness out of the presence of Mrs. Pryor.

WITNESS (continuing): And he gave me written authority to bid in the property for him to the amount of his debt and expenses of sale. The authority to sell is written on the back of the deed of trust.

Q. I show you Exhibit A. H. No. 5 in this case and ask you what that is.

A. This is the written authority that Mr. Jenison gave me to bid the property in for him at the sale for an amount sufficient to cover the loan, taxes, and expenses.

Q. State whether or not that paper (Exhibit A. H. No. 5 in this case), was delivered to you by Mr. Jenison in person.

A. It was; it was signed in my office and handed to me by him.

Q. Now, Mr. McIntire, I hand you this paper (Exhibit A. H. No. 4 in this case), purporting to be a deed of trust from Thomas Pryor and Mary C. Pryor to Edwin A. McIntire, trustee, dated May 2, 1880, and I ask you to look at the endorsements upon the back of it, which I now read: "Failure having been made to pay the note secured by the within deed of trust, the trustee is hereby authorized to advertise and sell the property at public aution. Wash'n, D. C., May 25, '81. H. Jenison." State what are the facts about that endorsement.

A. This is an endorsement signed by Mr. Jension when he authorized me to advertise and sell the property for non-payment of the indebtedness named in this deed of trust.

Q. Did he deliver that to you in person?

361 A. He did.

Q. Well, now, I want to know whether he had and brought to you the deed of trust at that time, or whether you had it in your possession?

A. This is the deed of trust which he brought to me.

Q. At that time?

A. Yes, sir; at that time. By virtue of that deed of trust and the advertisement the property was sold at public auction, Mr. J. T. Coldwell acting as auctioneer, on the 25th day of June, 1881, to Mr. Hartwell Jenison at thirty-one cents per sq. foot. Mr. Jenison, after the deed from me as trustee was made out, called at my office and said that he could not pay any of the expenses of the sale—neither the auctioneer's fees nor the trustees' commission nor the advertising or any of the expenses——

Mr. MACKEY (interposing): I object to any testimony as to what Mr. Jenison said to Mr. McIntire out of Mrs. Pryor's presence.

WITNESS (continuing): And upon my interrogating him upon what I had better do under the circumstances he asked me whether I could procure a loan for him to cover expenses and to pay the taxes.

Q. Mr. McIntire, have you there before you any statement of the account?

A. I guess it is on the back of the deed of trust.

Q. Will you look again on the back of that deed of trust which I have already shown you and state what the figuring thereon endorsed is and by whom it was made?

362 A. This figuring is in my own handwriting, and, in accordance with my usual custom to mark on the deed of trust under which I sell the price, the purchaser, and all the particulars,

I see that I have entered here the account with Mr. Jenison, showing the amount of his note under which I sold, the accrued interest, and the expenses of the sale, amounting altogether to $839.19.

Q. Will you please just read that amount as it appears there.

A. (Reading:)

Sold June 17, '81, to H. Jenison, for 31c. p'r ft.....		$806
Note.....		450
Int. to June 17, from Nov. 2, '80, 7½ mos. @ 8%.....		22 50
Taxes, 1881.....	18 95	
1880.....	22 04	
Water (on lot 21).....	5	
" 22).....	6 72	
Spe'l.....	226 10	
		278 81
Trustee's com.....		40 30
Auctioneer.....		23 12
Advert. in Critic.....		24 46
		839 19

Q. Mr. Jenison declined to pay any of the expenses?

A. He declined to pay any of the expenses or taxes.

Q. And desired you to procure a loan upon the property for that amount?

A. Yes, sir.

Q. Well, now, did you do it?

A. I did.

Q. What was the amount for which you procured the loan?

A. The loan was four hundred and twenty-five dollars.

Q. You procured a loan for four hundred and twenty-five dollars to cover these taxes, expenses, etc.?

363 A. I did.

Q. Well, now, what was done with the deed, or did you make a deed as trustee to Jenison?

A. I made a deed as trustee to Mr. Jenison and took a deed of trust from him.

Q. For this four hundred and twenty-five dollars?

A. Yes, sir.

Q. Who appeared as trustee in the new deed of trust, you?

A. I was one of the trustees. I have forgotten whether there was one other or not. I have that deed of trust.

Q. If you have it you had better put it in here, had you not?

A. Here it is.

Q. I now hand you a paper purporting to be a deed of trust, bearing date June 29, 1881, between Hartwell Jenison, of the city of Washington, in the District of Columbia, and Malvina E. Jenison, his wife, of the first part, and Edwin A. McIntire, of the same place, trustee, of the second part, purporting to secure Emma Taylor in the sum of four hundred and twenty-five dollars for money loaned and advanced and for which Jenison has executed his cer-

tain promissory note, of even date with the deed, and payable in one year to the order of the said Emma Taylor, with interest. I ask you to look at that paper and state whether or not that is the deed of trust to which you have just referred.

A. This is the deed of trust to which I have just referred.

Mr. HENKLE: I here give that deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and
364 marked "Exhibit A. H. No. 25.")

Q. Now, Mr. McIntire, after you had been authorized by Mr. Jenison to effect that loan, to whom did you apply for the money?

A. I applied to Miss Taylor.

Q. Emma Taylor?

A. Yes.

Q. And she agreed to take it?

A. She did.

Q. And thereupon you prepared those papers?

A. I prepared that deed of trust which has just been filed in evidence as Exhibit A. H. No. 25.

Q. And the note?

A. Yes.

Q. Where did Jenison execute the deed of trust?

A. I have no recollection. He must have taken the deed of trust away from the office, because his wife has signed it with him, and I do not remember ever meeting his wife; consequently I think it was done away from my office.

Q. Well, after that deed of trust was executed what did you do with it—after it was given to you?

A. It was recorded. I procured the money from Miss Taylor and paid the expenses. With the money I gave an account to Mr. Jenison, which showed him how the money was expended. I went to him or he came to me, I do not remember which. However, he was satisfied.

Q. You rendered an account to him?

A. Yes.

365 Q. Have you the account you rendered in writing?

A. I do not know whether I rendered an account specifically to him or showed him the account which I had.

Q. You did one or the other?

A. Yes.

Q. State whether he was satisfied or expressed any dissatisfaction with the account as rendered.

A. He never expressed any dissatisfaction, but, on the contrary, he was satisfied. I showed him the bills I paid and showed him the account. I thought the account was marked on the back of the last trust, but it is not. I must have it.

Q. Well, then, go on, if you please. What took place next after that?

A. When that note fell due—when the interest fell due—I was called upon for the interest. I wrote to him, and he came down to the office and asked me whether I could have it put off for a while

longer. He asked me whether there was a chance to sell the property and requested me to put my board upon the front of the lot. I put my board there, and advertised the property for him at my own expense. When the note fell due he told me to get rid of the property for him, as he did not want to be troubled with it any longer, and when I asked him if he wanted the sale put off still longer he said, "no;" he wanted it off his mind. He asked me whether I could get Miss Taylor to take the property from him. I interviewed her. She at first did not want to do it, but afterwards consented to do it, and the deed was made by him and his wife to Emma Taylor.

Q. Where is that deed; do you know?

366 A. Here it is.

Q. What was the amount of consideration which Miss Taylor paid to Mr. Jenison for the conveyance?

A. She surrendered him the note which he had made, and, I think, made a payment of two dollars or five dollars, something like that.

Q. Were the parties brought in contact with each other when this transaction was made or was it done through you?

A. I am not certain. Those transactions are often made by the agent himself. I do not know whether I brought them together or whether I just went from one to the other, though he was perfectly satisfied. It was his suggestion. However, he admits that.

Q. You say that Mr. Jenison delivered this deed to you?

A. I am not certain whether he delivered it to me or whether the transaction was made through Miss Taylor herself. It is possible it was to me alone. If it was delivered to me, then I delivered it to her; that was the custom. I had no distinct recollection, however, how it was done; whether directly to her or to me.

Q. Whose handwriting is that deed in?

A. I think it is my handwriting. Yes, sir; that is in my handwriting.

Mr. HENKLE: I here give this deed in evidence.

(NOTE.—And the same is herewith filed in evidence and marked "Exhibit A. H. No. 26.")

Q. Look at this paper now handed you (marked Exhibit

367 A. H. No. 21 in this case), purporting to be an account of J. T. Coldwell, auctioneer, and state what it is.

A. This is the bill rendered to me by the auctioneer for his services at the sale of the property where he struck it down to H. Jenison at 31c. per square foot, as stated in the account.

Q. Where did you get that paper?

A. This paper was presented to me by Mr. Coldwell for his services. I paid him. This is one of the vouchers that I showed to Mr. Jenison.

Q. I want to know whether you were familiar with the handwriting of Mr. Coldwell, auctioneer.

A. I was quite familiar with it. I had seen him write many times.

Q. Had you been associated in business with him?

A. He was in the office with which I was connected.

Q. The firm of B. H. Warner & Co.?

A. Yes, sir; he was auctioneer for the firm. I paid him the money, as stated there, and that is the receipt for it. I showed it to Mr. Jenison and he was satisfied with it.

Q. Now you have gotten the property into Miss Emma Taylor, what was the next step in the history of this title?

A. In 1884 Emma Taylor, who was buying and selling property from time to time, authorized me to sell the I-street property and this F-street property (she had gotten the title of both of them, No. 2112 I street and this property mentioned in the bill in this case, the F-street property), and she offered to sell them for twenty-
368 five hundred dollars, as she wanted to realize money.

Q. To whom did she make that offer?

A. I do not know to whom else, but she came to my office and offered to sell it for that. I thought it was a bargain and corresponded with my sister about it; I recommended her to take it and she took it—both properties—for twenty-five hundred dollars.

Mr. MACKEY: I object to any testimony as to the correspondence between the witness and his sister about it; if he has the correspondence it should be produced.

Mr. HENKLE: I do not care about that fact at all.

Q. You did buy it for your sister?

A. Yes.

Q. Did your sister come into contact with Miss Taylor in the negotiation, or was the negotiation made with you?

A. She was at the office; they were both at the office, I think, at the same time in connection with this property.

Q. And your sister agreed to give her the price?

A. Yes, sir; acting upon my advice.

Q. How was the payment of the purchase-money made?

A. Twenty-five hundred dollars paid to Miss Taylor at the time, in cash.

Q. Was it paid through you or by your sister directly?

A. I think it was paid directly by me—that is, by her through me. That is the way I made most of the payments for her.

Q. I want to know whether that was your money or the money of your sister.

369 A. I never had any interest in it.

Q. You mean to say that every dollar of the money was paid with your sister's money?

A. Yes.

Mr. BOARMAN: State which sister.

Q. Which sister?

A. My sister Martha McIntire.

Q. Did your sister Martha McIntire take a deed from Miss Taylor for the property?

A. Yes.

Q. Where is that deed?

A. I think that deed is filed in evidence here.

Q. I hand you a paper (Exhibit A. H. No. 14 in this case) purporting to be a deed from Emma Taylor, of Philadelphia, Pennsylvania, to Martha McIntire, of the city of Washington, dated May 31, 1884, and ask you what that paper is.

A. This is the deed, to which I have just referred, for what is called the I-street property, described here as part of lot 21, in square 77——

Mr. MACKEY (interposing): The Southey property?

WITNESS (continuing): Formerly the Southey property, and also conveying the property named in this bill, being parts of lots 21 and 22, in square 569.

Q. That is the deed to which you have referred?

A. Yes.

Q. And that deed was delivered to your sister Martha at
370 that time?

A. It was; and the consideration was paid mentioned in there.

Q. The consideration was fully paid?

A. Yes.

Q. Now, Mr. McIntire, after your sister got the deed did she take possession at once of both properties?

A. Yes.

Q. What did she do afterwards with the F-street property now in controversy here?

A. She entered into a contract with Messrs. Medford & Waldron, builders, to erect four small houses on the lot—two on the F-street front and two in the Madison-alley end of the lot.

Q. When was the contract made?

A. The contract is in evidence here. I think it was made in 1884.

Q. I hand you a paper marked Exhibit A. H No. 18 in this case and ask you what that paper is.

A. This is the agreement and specifications for the building of the houses, to which I have just alluded, made with Messrs. Medford & Waldron by me as agent for my sister, Martha McIntire, as stated here.

Q. Is that the original or a copy or duplicate?

A. This is a duplicate copy.

Q. It was executed in duplicate, was it?

A. It was. This was made, I said, with me as agent. It was made directly with her in my presence as a witness, and not with me as her agent, although I acted as her agent in the dis-
371 bursement of the money under that contract.

Q. Did you negotiate the contract as her agent with these parties?

A. I think very likely. A majority of the negotiations were made at my office and reported to her from time to time. The plans drawn were submitted to her and modified by her.

Q. How were the payments made?

A. As the houses progressed.

Q. And by whom were they made?

A. By me, after I received the money from her—that is, the bills would be presented to me, I would show her the bills, and she advanced me the money to pay them.

Q. What objection was there made by Mrs. Pryor to the building of these houses?

A. None whatever that I ever heard until the institution of this suit.

Q. You say that you never heard from her nor from anybody else the claim of title on her part to these lots prior to the institution of this suit?

A. I never had the least intimation. If I had I would, as a business man, have advised my sister not to proceed until it was settled. I frequently saw Mrs. Pryor when I went to the buildings. I knew her by sight. She never said a word to me except "Good morning, Mr. McIntire," or "Good evening, Mr. McIntire." That is all. She was always pleasant, and I never said anything to her nor she to me except that.

Q. I have, perhaps, skipped a little, and this leads me back. Were you present at the public sale of the property made by
372 Mr. Coldwell?

A. I was.

Q. Do you know to whom the property was knocked down at the sale?

A. It was knocked down to Hartwell Jenison for thirty-one cents per square foot.

Q. Do you know whether Thomas Pryor, the husband of Mary C. Pryor, the complainant in this case, bid at that sale or not?

A. I do not know. I know that he had no money. I do not think it likely that he would have bid.

Q. I want to know whether before the sale he had made any arrangements with you or proposed any arrangement with you by which he should become the purchaser at the sale.

A. He never said anything to me about it.

Q. Upon terms that you and he were thereafter to agree upon?

A. He never intimated anything of the kind to me. I am too well acquainted with my duties as trustee to listen to anything of the kind.

Q. Did you or not have authority to make such terms?

A. I had no authority to make any such terms.

Q. Were you anything else than a bare, naked trustee, with the authority simply of a naked trustee at that time?

A. That is all.

Q. You had no power to make terms with him?

A. Not the slightest.

Q. Except those advertised and named in the deed of trust?

A. No, sir.

Q. And you say you did not?

A. I did not.

373 Q. And there was no conversation between you relating to it?

A. None at all. I never spoke to Mr. Pryor in Mrs. Pryor's presence. He universally came to my office. I never saw her at my office.

Q. Did they take the lease upon the property after it was sold?

A. Not after the sale to Mr. Jenison. After they had made the conveyance to my sister Martha for the consideration of five dollars, she assuming the encumbrance, one of the conditions was that she should lease the property to Thomas Pryor so that he could carry on the wood and coal business.

Q. That was one of the conditions of the sale?

A. Yes, sir; no terms were made with Mrs. Pryor. I never had a word with her, as I said before, at that time, nor subsequently, but once, and then to offer her work.

Q. That lease is in writing?

A. Yes, sir; and filed in evidence here.

Q. Now, Mr. McIntire, I hand you a paper marked "Exhibit A. H. No. 17," in evidence in this case, and ask you what that is.

A. This is the agreement to which I refer, made with Thomas Pryor, for the lease of the premises for one year from May 4, 1881, to be used by him as a coal and wood yard. It is signed by my sister, Martha McIntire.

Q. Now, Mr. McIntire, was that arrangement made with you as agent for your sister? Did you transact the business for your sister?

A. I think I did in that case. This was done with her consent and approval.

374 Q. Was the transaction, as a matter of fact, anything other than what appears upon the face of that agreement?

A. Yes, sir; he paid rent for it.

Q. Was the transaction any different than purports upon its face?

A. No, sir; nothing but to rent or lease the property for one year.

Q. And the terms of the renting appear upon the face of the paper?

A. Yes, sir.

Q. Do you say that there are no other terms outside of that agreement?

A. None except those embraced in that agreement.

Q. He simply leased it for a year for a wood and coal yard?

A. Yes.

Q. You say that there was no agreement that the rent that was paid should be understood to be applied upon the purchase of the property?

A. There was no such understanding as that at all. On the contrary, the deed of the property to my sister, Martha McIntire, was made to her before she authorized this agreement to be made with him. He had parted with the property, and then she turned around and leased it to him for a year, so that he could carry on his wood and coal business. He feared that if the property was sold under the deed of trust some new party would get it and put him out of

the business. He was then sick. I was helping him. He came to me as a friend. All the wood and coal in that yard belonged to me personally. I helped him. I gave him orders on
375 Samuel Emery and bought wood from the country, because I knew the man and thought he was a good, honest fellow, and I helped him as a matter of charity.

Q. Did Thomas Pryor make any claim upon you at any time afterwards that he was the purchaser?

A. He never intimated anything of the kind at all, and he never so understood it, I know.

Q. As matter of fact, however, your sister did not keep the property under that sale?

A. She took rent for one or two months, and then finding that the taxes were more than he had represented to her, more than he thought they were (I do not say that he knew they were more, for he was surprised himself), so much more than she had been informed they were, that she declined to take the property, declined to pay the encumbrances, and let it go to sale.

Q. I hand you a paper and ask you to look at it and state what it is.

A. This is a promissory note of Thomas Pryor and his wife, dated May 2, 1876, for $500.00, drawn to the order of George E. Emmons, and by him endorsed "without recourse." This is the note which Mr. Jenison held prior to my coming in contact with the property. This is the note concerning which he said, "I (referring to me) have collected the interest." The indorsements on the back are in his handwriting, if I am not mistaken.

Q. How many indorsements are there?

A. Seven in his handwriting and one I see in my brother's handwriting.

Q. What are those indorsements, receipts of interest?

A. Yes, sir; and receipt of fifty dollars paid on account of
376 the principal.

Q. Those indorsements are in his handwriting?

A. All except one are in Mr. Jenison's handwriting; all, possibly, except two; there is one I am not certain about being in my brother's handwriting; I have a little doubt about it; but five of them are in Mr. Jenison's handwriting.

Q. None of them are in your handwriting?

A. None at all in mine. The note came into my possession after I had prepared the release of that trust, and it was tacked to the release in the ordinary course of business, to be handed back to Mr. Jenison, but I do not know why it is in my possession. I did not discover it until quite lately since Mr. Jenison was on the stand.

Mr. HENKLE: I here give that note in evidence.

(NOTE.—And the same is herewith filed in evidence and marked "Exhibit A. H. No. 27.")

Q. I hand you two papers (both marked "Exhibit A. H. No. 17" together) filed in this case, one purporting to be a deed of quitclaim from Hartwell Jenison and his wife to Martha McIntire, bearing

date September 27, 1887, and the other purporting to be a check, No. 3140, for $100.00, payable to the order of Hartwell Jenison and signed by E. A. McIntire and attached to the deed. Please state what those papers are and how and for what reason they came to be made.

A. After my sister had the houses built on F street, on the alley in the rear, the property was offered for sale, or during the
377 time they were being built they were offered for sale. There were two or three inquiries after them, and, among others, one from a party who sought the advice of Mr. Fred. W. Jones, an attorney, who is now deceased. Mr. Jones met me on the street one day and advised me that there was a defect in the title; he told me what it was, and he told me to have it corrected by getting a quitclaim from Mr. Jenison.

Q. What was the defect?

A. The defect was in the acknowledgment. I looked the matter up, found as he had said, and reported to my sister; and then I went to see Mr. Jenison at her request, and Mr. Jenison said that if I made it an object to him he would execute any conveyance that was prepared for him. I told him that the conveyance would be necessarily a quitclaim, and he, after some hesitation, said that he would sign it provided I would give him one hundred dollars. I thought he asked too much. I told him that I was not authorized to do that, but that I would report it to my sister, Martha McIntire; and when I reported it to her she consented to give that, because she wanted a good title and be able to collect any drawbacks gotten against the property; at that time it was thought there might be some. A quitclaim was prepared; this quitclaim was made which I hold in my hand, dated September 27, 1887; I took it to Mr. Jenison at the Treasury Department and he signed it and acknowledged it while I was there, if I mistake not, before a man who was a clerk in his office or in one of the adjoining rooms, and then sent it to his wife, who was in Minnesota. When the deed came back from Minnesota Mr. Jenison notified me; I went to the Treasury Department and saw him and he handed me the deed of quitclaim on the 4th day of October, 1887; I then drew my check to
378 his order, right in his room, and this is the check, and on the same day I brought the quitclaim deed to the recorder's office and put it on record. The quitclaim recites the consideration to be one hundred dollars, and the amount was paid, as I have stated, by that check.

Q. I see that the deed bears date September 27, 1887, and the check bears date October 4, 1887. Will you please explain that?

A. The delay was caused by his sending the deed out to Minnesota for his wife to acknowledge. Mr. Jenison has said that after I first came to him with the deed it was some days before I turned over the one hundred dollars to him. Some days transpired between the time I left the deed with him and the time he handed it back to me. I handed — to him and he sent it to Minnesota, and then I went to him, received the deed, and turned the check over to him.

Q. What deed was it that Mr. Jones advised you there was a defect in its acknowledgment?

A. This is the deed, from Jenison and his wife, where the words "personally well known" or something of the kind were stricken out.

Q. I hand you the deed (Exhibit A. H. No. 25) and ask you if that is the deed containing the defective acknowledgment.

A. Yes, sir; the words "being personally well known to me to be the person," etc., referring to the wife of Mr. Jenison, being stricken out.

(Adjourned.)

NOTE.—For further direct examination of E. A. McIntire see page 387.

379 JANUARY 9, 1893.

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James T. Boiseau.

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Direct examination.

By Mr. HENKLE:

Q. What is your business?

A. I am an iron-worker; iron-railing making is my specialty.

Q. You live in this city?

A. Yes, sir; at No. 425 New Jersey avenue southeast, with my place of business at No. 418 New Jersey avenue northwest.

Q. Are you acquainted with the property Nos. 108 and 110 F street northwest, in this city?

A. Well, General, I do not know them by the numbers. I know the locality; I know the houses, for I put up an iron fence in front of them some three years ago.

Q. Do you know the houses owned by Miss Martha McIntire on F street between First and Second streets northwest, in this city?

A. Yes, sir.

Q. When was it that you put up an iron fence there?

A. I guess it was about three years ago. I would not like
380 to state positively, but that is my recollection.

Q. How far is your place of business from these premises?

A. I do not suppose more than one hundred and fifty feet.

Q. How long has it been that near?

A. Well, I have been there for sixteen or eighteen years. I went there in 1876.

Q. Do you remember those lots before the houses were built?

A. Yes, sir.

Q. What were those lots used for then?

A. Well, the only knowledge I have was of their being used as a wood and coal yard—retail wood and coal business.

Q. Was it in a very small way or a large way?

A. It was in a small way.

Q. Who did the wood and coal business there?

A. I have no knowledge of him. I only know that his name was Pryor, and I would not know it now if Mr. McIntire had not called the name, for I had forgotten it.

Q. Was he a white or colored man?

A. A colored man.

Q. Do you know where Mrs. Pryor lived?

A. Yes, sir.

Q. Where was that?

A. On Madison alley.

Q. What is the distance from her house west of the alley houses on said lots?

A. About thirty feet, I think, General; not less.

Q. Did you make a diagram or sketch of those premises?

A. Yes, sir; a slight one.

381 Q. How recently?

A. On last Saturday.

Q. Have you it with you?

A. Yes, sir; I think I have.

Q. Will you please produce it?

A. Here it is.

Mr. HENKLE: This is a rough diagram; but I do not propose to offer it in evidence, as there is one of the same kind already filed with the deposition of Mr. Fouche.

Q. How does this correspond with the one offered in evidence, or have you compared them?

A. No, sir; I do not know. I believe I marked there on Firs-street the direction pointing north.

Q. Well, you measured the distance?

A. Yes, sir.

Q. What is the width of the alley?

A. I think it is a twenty-foot alley. I did not measure the width of the alley, but I think that is about the width of the alley. It looks to be that.

Q. You say that alley is what width?

A. About twenty feet, I think.

Q. What is the distance from the east side of Mrs. Pryor's house to the west side of the houses in the alley to the rear of Nos. 108 and 110?

A. About thirty feet. I think not less. It is likely more, if anything.

Q. Twenty feet across the alley and thirty feet along the alley?

382 A. Yes, sir.

Q. Well, now, what is the distance from there to the front of F street?

A. I think one hundred feet. I did not measure it, but that is my judgment.

Q. Was the Johnson house there in 1881?

A. Well, I cannot state positively.

Q. That is, where the wood and coal yard was there?

A. Yes, sir. I think the Johnson house was there—that is, the wood and coal yard was in the place where the Johnson house was built. I remember the building of the Johnson house and the place before it was built there, but when the Johnson house was built I could not say, as there was nothing particular to impress it upon my mind.

Q. You know that the Johnson house was there when the coal and wood yard was there?

A. Yes, sir; I am pretty well satisfied of that.

Q. Could a person sitting at the front windows in Mrs. Pryor'-house have heard an auctioneer crying a sale at the F-street front of those houses, Nos. 108 and 110, before those houses were built there?

Mr. MACKEY: Objected to as calling for an opinion from the witness.

A. I could not say about that. I would suppose that it would depend altogether upon how loud the man hollered.

Q. Would it take loud hollering to be heard?

Mr. MACKEY: Same objection.

383 A. Yes.

Q. Did you know Mr. Coldwell, the auctioneer?

A. Yes.

Q. Did you ever hear him cry a sale?

A. I do not think I have.

Q. Do you remember the tone of voice he used?

A. No, sir; I do not.

Q. Would it or not have to be in a loud tone of voice to be heard?

Mr. MACKEY: Objected to as leading and calling for an opinion from the witness.

A. That is my op-nion. I think it would have to be a loud voice.

Q. Could one sitting at the front windows in Mrs. Pryor's house have seen across to the front of Nos. 108 and 110 before those houses were built there?

Mr. MACKEY: Objected to as calling for an opinion from the witness.

A. I think that would have been difficult. My reason for saying that is that in an oblique direction the view from Mrs. Pryor's house would be stopped by the houses there coming into the line with F street from the point where the person would be sitting, because the back building of the Johnson house extends back, and there is another house in front of Mrs. Pryor'- house which would have obstructed the view.

Q. Who employed you to put the iron fence up there?

A. Mr. Edwin A. McIntire.

384 Q. Was it on his own account or for whom?

Mr. MACKEY: Objected to.

(NOTE.—No answer to the last question.)

Q. Was it on his account or as agent?

Mr. MACKEY: Objected to.

A. As agent.

Q. Agent for whom?

A. He did not state and I never knew; but I remember distinctly that he said they were not his houses.

Mr. MACKEY: I object to the answer of the witness stating what Mr. McIntire said on that occasion.

WITNESS: What makes me remember that is in settling upon the price. The front fence is a little larger than the division line. Mr. McIntire says, "Now, those houses are not mine or I would not be so particular about getting the price down. I am only the agent, and I want to get this work done as cheap as I can." The division line was 80c. a foot and the other was 90c. That is what makes me remember that Mr. McIntire represented himself to me as the agent and not the owner.

Mr. MACKEY: Objected to because a party cannot make evidence for himself in that way.

385 Cross-examination.

By Mr. MACKEY:

Q. How do you know where Mrs. Pryor lives?

A. I went to the house.

Q. When?

A. On Saturday last.

Q. Did you see Mrs. Pryor?

A. Yes.

Q. Did she tell you she lived there?

A. Yes; she told me that she was Mrs. Pryor. I did not know her.

Q. But whether she was Mrs. Pryor or not, you did not know?

A. No, sir.

Q. Do you know whether she lived in that particular house at the time of sale in 1881?

A. Yes, sir; she told me so. Oh, she did not tell me that she lived there at the time of the sale, but she said that she lived there all her life.

Q. Now, you do not know when this Johnson house was put up there?

A. No, sir; I could not state, but it was put up since I lived in that neighborhood—since I kept my shop in that neighborhood—but I do not know how long since.

Q. When did you first keep your shop in that neighborhood?

A. I went there in 1876.

Q. Do you do jobs yet for Mr. McIntire?

A. Yes, sir; sometimes. I have worked for Mr. McIntire.

A. Are you working for him now?

386 A. No, sir; I am not working for him now. I have got an order to look at a house which he gave me two years ago, but I have not looked at it yet.

Q. You expect to do that job?

A. Well, yes; if we can agree about the price. I have not yet looked at the job. I intended to go this morning, but it was too cold to go away out on T street where the house is.

Q. How did Mr. McIntire come to see you about going and measuring these distances between the Pryor house and the other houses?

A. On Saturday last. I went to his house to see him about this job I speak of and he asked me how long I lived there. That is what brought the whole thing up. Perhaps if I had not lived there *do* long he would not have asked me about it.

Redirect examination.

By Mr. HENKLE:

Q. You remember distinctly that the Johnson house and the wood and coal yard were there at that time?

A. Yes, sir; my recollection is that the Johnson house was there at the time that Mr. Pryor kept this wood and coal yard there.

Recross-examination.

By Mr. MACKEY:

Q. Do you recollect whether the Johnson house was there before or after the wood and coal yard was there?

A. No, sir; I cannot say whether it was before or after.

387 I do not know whether when the Johnson house was built there the wood and coal yard was there or not; it might have been, but my recollection is not perfect enough to state that.

J. T. BOISEAU.

* * * * * * *

(Adjourned.)

JANUARY 10, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who deposes and says, being recalled for further direct examination:

By Mr. HENKLE:

Q. Now, Mr. McIntire, resuming: Mrs. Pryor testified that after the sale at which she claims her husband was the bidder or buyer you promised to sell the property for her. What do you say as to that?

A. I never had any conversation with Mrs. Pryor. I never made such a promise to anybody.

Q. Was there ever at any time any intimation in any form
388 whatever that you held that property or that anybody held it after that sale for the benefit of Pryor or with the understanding or agreement that Pryor was to have it any time or upon any conditions, or that it was to be disposed of at any time or in any way for his benefit?

A. There was not.

Q. How is it about the sale to your sister, Martha McIntire, for five dollars of which you have testified?

A. The sale was made to her in consideration of the payment of five dollars, she assuming the indebtedness on the property and giving Thomas Pryor a lease for one year so as to carry on his business.

Q. Was that sale before the sale at public auction?

A. It was some while before—a little while before.

Q. And you say that never afterwards was there any kind of arrangement by which Mr. Pryor or Mrs. Pryor was to have any benefit in the property?

A. None at all.

Q. Mrs. Pryor testified that you agreed to sell to Thomas Pryor, her husband, and take small notes and not to disturb him. How is it about that?

A. I never did anything of the kind; I never had any conversation with Mrs. Pryor or in her presence except long after the sale.

Q. Did Thomas Pryor in his lifetime or has Mrs. Pryor since his death ever make any offer to pay anything at any time or place or any amount to you or to anybody, so far as you know, on account of that property?

A. No, sir.

389 Q. Mrs. Pryor testified that she objected to the building of the houses on these premises, and that she gave notice that she objected to the building of those houses, as the property belonged to her or her husband. Now, what, if any, notice did you ever have from Mrs. Pryor not to build those houses and that she claimed to be the owner of the property, or what notice did she give to your sister, Martha McIntire, so far as you know, of that character?

A. I never heard that she made any claim to the property until after this suit was begun. She saw me from time to time while the houses were in progress, and never said anything to me at all except just "Good morning, Mr. McIntire." She never intimated in the least that she claimed any ownership of the property or any interest in it.

Q. Then the first notice you had that she made any claim at all was contained in the bill in this case?

A. It was.

Q. Mr. Pryor paid some rents there after the property was knocked down to yourself. He paid some rent to you, did he not?

A. Yes, sir; Mr. Mackey had the receipts and showed them some time ago.

Q. What use did you make of those rents?

A. Some of the rents went to pay part of the interest due Mr. Jenison and some went to make repairs on the high fence in the front and rear and on the shed or office used there.

Q. Mrs. Pryor testified that while they were nominally in the form of rents they were really to be applied and credited upon the purchase of the property. What do you say to that?

390 A. I never made such a promise. I never heard of such a thing until she stated it on the witness-stand.

Q. And you say that was not so?

A. It is not true at all. The receipts given her and which were shown here show for what purpose the rent was taken.

Q. These rents then, you say, were paid to Mr. Jenison after that sale?

A. A small amount was paid to Mr. Jenison.

Q. And the rest were appropriated as you have said?

A. Yes, sir; for repairs.

Q. Well, now, how long did Mr. Jenison continue to occupy the lot?

WITNESS: Jenison?

Mr. BOARMAN: He never did occupy it.

WITNESS: Pryor occupied the lot.

Mr. HENKLE: I mean Pryor, after that sale.

A. He occupied it for a few months, until his health failed him, and then he locked up the front and back and handed me the keys. Not very long after that he died.

Q. And where did he live until the time of his death?

A. I think No. 117 Madison alley, to the rear and westward of these houses.

Q. You say that he locked up the back and rear and gave you the keys of the gates?

A. Yes, sir; of the gates and the office.

Q. What office?

A. He had a small building on the lot that he called his

391 office; where he sold the wood and coal; where he remained during inclement weather.

Q. How did he come to give you the keys?

A. He gave me the keys just as any tenant vacating the premises would. He thought it was his duty to do that, and I thought so.

Q. He recognized you as his landlord?

A. Yes, sir, and paid me the rent for several months.

Q. And when he gave up the premises he gave you the keys?

A. Yes, sir.

Q. Where did that auction sale take place?

A. On the west side of the F-street front of the lot. The auctioneer, I mean, stood on the west side of the F-street front.

Q. Where did Mr. Pryor live at that time?

A. At the house I have just named in Madison alley, to the rear and the westward.

Q. Where Mrs. Pryor lives now?

A. Yes, sir.

Q. What was the width of the alley?

A. The alley is twenty feet across.

Q. How far was it from that house to the west side of this lot?

A. From the east side of Mrs. Pryor's house to the west side of this lot is about thirty-five feet.

Q. Well, now, might she have seen to the front where the auctioneer stood from the front windows of her house?

A. It is impossible for her to see one-third of the way across the lot. I have been to her house several times when Thomas
392 Pryor had his office on the lot. The office was about twenty feet from the alley, and from her house it was impossible to see his office.

Q. Well, how is it at the present time?

A. Now there are four houses built on the lot, and, of course, it is a matter of impossibility for her to see any way across the lot at all, it being completely built on.

Q. You knew Mr. Coldwell very well, I suppose?

A. Yes, sir; quite well.

Q. How was it as to your attending sales made by him as auctioneer?

A. I used to attend nearly every sale made by him.

Q. What was his habit as to the tone of his voice in crying sales?

Mr. MACKEY: Objected to, as the question here is not what Mr. Coldwell's habit was, but what he did at this particular sale.

A. His tone of voice was lower than that of a majority of auctioneers; frequently I have come to his assistance because my voice was louder, and have taken the book from him and called the sale.

Q. What was his habit as to announcing the successful bidder?

A. The successful bidder is never announced in the same tone of voice as the crying of the sale; it is always done in a low tone, if made at all. As to a majority of sales, the name of the purchaser is not announced at all; but when announced it is always announced in rather a lower tone.

Mr. MACKEY: I object to the testimony of the witness as to
393 what was done at sales, the question here being what was done at this sale.

WITNESS: At this particular sale no name was announced at all. Mr. Coldwell received the bid from me for Mr. Jenison.

Q. No name was announced at all?

A. No, sir.

Q. In what tone of voice did he on this particular occasion cry that sale?

A. In his usual tone, which was, as I said before, a lower tone than the majority of auctioneers.

Q. Mr. McIntire, you, as trustee, made a deed to Mr. Jenison for that property after that sale, did you, which is in evidence?

A. Yes, sir.

Q. Why was it not put upon the record at once?

A. It was withheld from the records because Mr. Jenison would not pay the fee for recording.

Q. And why would he not pay the fee for recording?

A. He would not pay any of the expenses. The expense of the recording of this deed was omitted by me when I made up the list of expenses; and subsequently, when I called his attention to it, he declined to pay anything.

Q. And for that reason the deed was not put on record?

A. That was the reason the deed was withheld from the record.

Q. Who held the deed?

A. I think it remained in my safe; it was turned over to him first, and then he brought it back to me.

394 Q. When the loan that you had procured for Mr. Jenison upon the property had matured, what did Mr. Jenison do or say to you about the property?

A. Mr. Jenison said that he did not want to be burdened further with the property; that he wanted to be rid of it. I asked him for the privilege of offering it at private sale, but he declined to have the matter prolonged, and said that he wanted to have it off his shoulders, or words to that effect, and he asked me to get the holder of the note to take the property, if she would, and surrender him the note.

Q. Well, did you make that arrangement?

A. That was subsequently done. The deed was made to Emma Taylor, and the note of Jenison was surrendered to him, cancelled. Both parties were quite satisfied with the arrangement when it was completed.

Q. I believe you have testified already that that arrangement was made by you and that the parties were not put in contact with each other. How was that?

A. I went to see Mr. Jenison at the request of the holder of the note, and it was his proposition that the deed be made to Miss Taylor and the cancelled note surrendered to him. I do not know that they came in contact at all.

Q. Well, now, Mr. McIntire, there has been considerable said or intimated in this case about transactions of this kind where the seller and buyer were not brought in contact and the transactions were negotiated by you. I want to know whether that is an uncommon or whether it is a common usage among real-estate brokers in this city or not.

395 A. I think I would be safe in saying that the majority of sales made by brokers are made without the buyer and seller coming in contact with one another.

Q. Do you mean at private sales?

A. Yes, sir; I have negotiated many loans as broker where, to my knowledge, the party making the loan and the party receiving the loan were not known to each other.

Q. What is the *modus operandi*?

Mr. MACKEY: I object to the *modus operandi* of sales in general. The question here is, What was done in this particular case?

A. The seller would leave a memorandum of the property with the broker and the broker would offer the property for sale, and, having obtained a customer, he would receive a deposit from the customer and report the same to the seller. If he were satisfied, a deed was made, and the money passed very frequently without the parties coming in contact.

Q. You mean the deed made and delivered to the broker?

A. Yes, sir; and he turn it over to the purchaser without the seller and buyer coming in contact.

Q. And receive the money and hand it over to the seller?

A. Yes; the broker does.

Q. That, you say, you think is the rule?

A. In a majority of cases that is done.

Q. Well, I believe Mr. Jenison said that he executed a deed merely in compliance with your request, or, rather, it is stated in the bill that Mr. Jenison executed a deed merely in compliance with your request. What do you say to that?

396 A. Mr. Jenison himself produced the deed. I think he stated in his testimony that it was his suggestion; but that was the fact, however; he did suggest it.

Q. Well, what kind of a business education has Mr. Jenison—I mean, whether he is a man who understands business or not?

A. Mr. Jenison is an educated man. He has been the head of the loan division of the Treasury Department for many years, where, to my certain knowledge, there has passed through his hands millions of dollars of loans; and he is called upon daily for decisions, or was at that time, in matters of law pertaining to loans.

Q. I believe, Mr. McIntire, you did testify when last on the stand that the one-hundred-dollar check which you gave to Mr. Jenison was the price for the quitclaim deed that he made to your sister?

A. Yes, sir; it was the price set by him for the execution of the deed.

Q. What consideration did the deed recite?

A. The deed recites that, and it was paid to him when the deed was delivered to me to be handed to my sister, Martha McIntire.

Q. The bill recites, I believe, that the deed was made to Emma Taylor. How is that?

A. No deed made to Emma Taylor—no quitclaim deed made to Emma Taylor, I should say.

Q. It was made to whom?

A. It was made to Martha McIntire.

397 Q. After the bill in this case was filed, state, if you please, whether or not you called upon Mr. Jenison; and, if so, how you came to go and what took place between you in relation to this suit.

A. After the bill was filed I called upon my counsel and stated the circumstances, and at his suggestion I called upon Mr. Jenison at his office in the Treasury Department and talked with him on the subject, and he asked me whether I could show him his signature to the papers authorizing a sale to be made and authorizing

me to bid in the property for him, and other papers which have been filed here.

Q. What did he say, Mr. McIntire, if anything, as to the state of his mind on the subject—his recollection?

A. He said that his mind was a perfect blank as to the circumstances connected with the transaction, and that, while he was satisfied with everything I had done, he dismissed the subject entirely from his mind long since. He stated that Mr. Mackey had told him that he (Mackey) had filed a bill, and that the statements which Mr. Mackey had made in the bill were true. I asked him whether he told Mr. Mackey that the things which Mr. Mackey alleged in the bill were told him (Mackey) by Mr. Jenison, and he (Jenison) said that his mind was a perfect blank as to the matters, and that he supposed he seemed confused when Mr. Mackey waited upon him, but that he would like me to show him the papers if he should call upon me. He did call upon me, and a day or two afterwards, at the suggestion of my counsel, I made a memorandum of the conversation had, which I have with me.

Q. Well, now, will you produce that memorandum and refresh your recollection by it, if you choose, as to the conversation?

398 A. He called at my house, No. 222 C street northwest——

By Mr. MACKEY (interposing):

Q. Can you remember this conversation without referring to that memorandum?

A. I cannot remember the exact words. At the suggestion of my counsel I wrote down what I have here.

Q. Have you the exact words there?

A. Yes.

Q. How long after this conversation did you make that memorandum?

A. The same evening that he was in my office.

Q. You say you talked to him in the morning?

A. No, sir; in the evening.

Q. What time in the evening?

A. This is a memorandum of the conversation I had with him at my office and not of the conversation that I had with him at his office. I made no memorandum of the conversation had with him at his office.

Q. How soon after the conversation was it that you made that memorandum?

A. Just as soon as he had gone.

Mr. HENKLE: Mr. Mackey, do you desire him to read it?

Mr. MACKEY: No; I do not care what he does.

By Mr. HENKLE:

Q. Well, now, Mr. McIntire, you may state what the conversation was, as your recollection is thus refreshed by that memorandum of the conversation.

399 A. (Reading:)

"Jenison called at 222 C street (my house) at 7 p. m., Nov.

18, 1890. He said he called to see what papers he had signed. He had long since entirely dismissed all thought of this property from his mind. He was always satisfied that the matters were conducted in an honorable way; that when he transferred his interest in the property it was his own doings, and he did so in good faith; and, having dismissed the matter from his mind, he possibly answered the plaintiff's attorney in a confused or unwilling way when they interviewed him about the particulars of this sale. He looked over the papers and said, 'Yes, I remember that now' (speaking of his ordering the sale); and alluding to his direction for me to bid it in for him, he said: 'It has been so long ago I really forgot that, but it is right; I recall it now.' Before he left I urged him to see me right in this matter, and he asked what I wanted him to do. I replied, To make answer of the facts in the case; and he said, 'All right. Prepare an answer and let me have it, and I will sign it.'

"Nov. 19, 1890, at 12½ p. m., I called at his office in the Treasury, and he said the answer which I then handed him was all right. In some two or three minor matters he made some alterations or interlineation, and he told me to leave it with him and he would sign and swear to it.

"Nov. 26, 1890 (between 12 & 1), I called at his office again, and he said, That paper (referring to the answer) is all right, but the attorney wants to see it. 'I will see you tomorrow,' he said.

400 As he did not come, Nov. 26, 1890, at 6 p. m., I met him at Gapen's house (where he was rooming, on Indiana avenue), and he said, 'I know the answer to be true. I do not claim that any wrong was done, but the attorney (Mr. Mackey) advised me not to sign that answer.' He then returned me the answer. He said, 'Mackey says I may make something by not signing it.'"

Q. Mr. McIntire, having refreshed your recollection by looking at that memorandum which you say was cotemporaneously made, are you or not able to state those facts from your memory thus refreshed?

A. I am, except as to the exact language.

Q. You remember that the whole of that occurred substantially as stated?

A. It did; and at your suggestion I wrote it down immediately after the occurrence.

Q. Was my suggestion made to you to write it down before or after the conversation had transpired?

A. You advised me to write down what he said before I went to see him, but I neglected to write down what he said while I was at the Treasury Department on my first call, and being reminded of it by you I wrote what he said at the subsequent calls immediately after my visit to him or his visit to me.

Q. What did he say, Mr. McIntire, as to whether he was satisfied or dissatisfied with the manner in which his business had been conducted by you?

A. He said he was quite well satisfied. He had no fault to find.

Q. How was it as to having been honorably or honestly done or not?

401 A. He used the word "honorably"—that it had been honorably done.

Q. What did he say was his idea and purpose when he transfer-ed the property?

A. That he wanted to be rid of it and have it entirely dismissed from his mind.

Q. Did he say whether he had done it in good faith?

A. He said that he had done it in good faith.

Q. What trouble was there, if any, about the two alley houses after they were completed on account of the want of a permit?

A. I was notified about the time that the alley houses were completed that they had been built without a permit and I was summoned to appear before the police court on account of violating the building regulations.

Q. Well, now, were you enquired of there at the hearing in the police court as to the ownership of the property?

A. I was asked who the owner of the property was. I had first stated that I was the agent for the property and that I did not feel called upon to look after obtaining permits. I was then asked who the owner of the property was, and, being told that I was compelled to give the name, I stated that it was Martha McIntire.

Q. Well, do you know what instructions she had given the builders in regard to the permit?

A. She had given them none at all. The understanding was that they were to obtain all necessary papers. The contract recites, I think, to build the houses in accordance with the building
402 regulations, and that would imply, I think, procuring permits. That is the interpretation, however, that she and I both put upon the contract, and the builders must have done likewise, because they obtained the permits in their own names for the front houses.

Q. Did you enquire of anybody, and, if so, whom and when, as to where Emma Taylor might be found?

A. I enquired of quite a number of persons who were frequenters of my office about the time she came there. During the lifetime of Judge Helmick I remember quite well stopping you on the street one morning and asking Judge Helmick in your presence whether or not he knew Emma Taylor, and his reply was that he knew her quite well. I have asked the constable in his office. I have asked quite a number of persons, but it is a pretty difficult thing to get them to recollect a person after the lapse of ten or twelve years unless their attention was particularly called to that person at the time. I went on to Philadelphia once on the track for her, but my health failed me while I was there and I had to return during a blizzard.

Mr. MACKEY: I object to all this as being raised *inter alia actis*. I wish it understood that my objection goes to all of this without repetition after each statement.

Q. What information, if any, did you obtain at any time as to the whereabouts of Emma Taylor?

A. Fred. Jones told me at one time that he knew her quite well.

Mr. MACKEY (interposing): I object to any statement that Mr. Jones made to the witness.

403 WITNESS (continuing): And at his suggestion I went to Philadelphia to the address he gave me. At another time John Taylor, who has testified here, gave me her address as Pittsburgh. I wrote there and received the letter back through the Dead Letter office. The letter I have with me.

Q. To whom did you write?

A. I wrote to Emma Taylor. I have the letter with me now.

Q. The paper which you handed me purports to be a letter bearing date September 17, 1887, and addressed to Miss Emma Taylor and signed by you. Will you state now whether you wrote that letter at the time it purports to bear date; and, if so, what you did with it?

A. I wrote the letter on the date mentioned in the letter and mailed it to her address on the same date, as the postmark on the envelope will show, at Philadelphia, Pennsylvania.

Q. Is this envelope which accompanies it the one in which it was enclosed, and was it returned to you through the Dead Letter office?

A. It was returned to me through the Dead Letter office, I presume; it was returned to me through the mail, and those are the envelope and the letter as originally sent and as they came back to me.

Q. Where have you kept these papers since they were returned to you?

A. I have kept them in my safe.

Q. And where do you produce them from now?

A. I produce them from a bundle of papers relating to this case.

404 Mr. HENKLE: I here give in evidence that letter and the envelope therewith.

Mr. MACKEY: To the admission of which we object on the ground that a party cannot create evidence for himself by writing letters to parties and then putting the letters in evidence.

(NOTE.—And the same are herewith filed in evidence and marked "Exhibit A. H. No. 28.")

Q. Had this suit or any of these suits been instituted at that time?

A. The suits of William E. McIntire had been instituted.

Q. None of these?

A. None of these suits that Mr. Mackey is manipulating.

Q. Mr. McIntire, I want to know whether that letter which has just been put in evidence was or not written and sent in good faith with the view of finding this lady.

A. It was. I went to some expense to visit Chicago subsequently at John Taylor's suggestion, because when I reported to him that the letter had come back to me from Pittsburgh he said that he was

not certain whether it was Pittsburgh or Chicago she went to. I went to Chicago and spent some little while there.

Q. You sought for her in Chicago?

A. I wrote to her first at Chicago, and not receiving any reply I presumed she was there and I then went on.

Q. What means did you employ to find her there?

A. I looked in the Chicago directory for every person by the name of Taylor and called upon some.

405 Q. And you did not find any trace of her?

A. No. John Taylor had told me that she married before she left Washington, but I did not know her husband's name. I was hunting under difficulties, but I was in hopes that some one by the name of Taylor there might possibly have met her or heard of her and could give me some clue to her.

Q. What degree of diligence had you employed to enable you to find the whereabouts of this lady?

A. I have done, I think, everything in my power. I have enquired of everybody that I thought might possibly know, but unfortunately I do not know the name of the man whom she is alleged to have married.

Q. Do you know when she left Washington?

A. I do not, but I think in 1884 or thereabouts.

Q. How frequently was she about your office?

A. She would come in once or twice a week; I would not see her for two or three months, then she would come by there two or three times a week, and then again I would lose sight of her.

Q. Do you know how, if at all, she was employed?

A. I was under the impression that she was in one of the departments. She always used to come down F street when my office was on F street, about the time the clerks were coming down from the departments.

Q. What manner of woman was she?

WITNESS: What manner?

Mr. HENKLE: What was her personal appearance?

A. She was a lady of medium height, about thirty years of

406 age. I should say thirty or thirty-five years of age; something like that. I am only guessing at it, for I never heard her say. She had pleasing manners and seemed to know considerable about business. I thought for some time, and I do not know now to the contrary, that she was related to Cathcart Taylor, who introduced her first to me, I think. He was or is agent of one of the daily papers in Philadelphia. He showed me a book and left it with me, which I have failed to find, having his photograph on the first page of it, where he delivered an address before the alumni of the Central high school in Philadelphia, and, knowing that I was a graduate of that school, he presented the book to me. Some one has taken it from my office or I have lost it with some other papers in moving my office.

Q. What was the course of the business or real-estate business operations between you and this lady?

A. When she would come in my office she would ask what bar-

gains I had, or something to that effect. She said she was looking around for bargains, and when I had anything which I thought was low I reported to her. She several times told me that she had money laying idle, and asked me to look for investments for her.

Q. Do you know how she kept her money?

A. I have no idea.

Q. Have you any idea as to how much money she had?

A. No, sir. She used to report to me from time to time that she had a few thousand dollars laying idle. She used to ask me whether I had a twenty-five-hundred-dollar house that I could sell for one hundred and fifty dollars, or something that way.

407 Q. A twenty-five-hundred-dollar house sell for what?

A. For one hundred and fifty dollars.

Q. That was a jocose remark?

A. I suppose so.

Q. Meaning, I suppose, that she wanted bargains.

A. That was her idea. She would not touch anything, she said, but what she thought was a bargain.

Q. Well, now, when you told her what you thought would be a bargain, and she bought, how did she pay over the money; was it in money or by check?

A. I think principally in cash, though I have an indistinct recollection of going to the Second National bank at one time to obtain money on a draft.

Q. Did Emma Taylor purchase this note of Mr. Jenison from you and pay you for it or not?

A. She did.

Q. Where was that transaction done?

A. As far as she was concerned it was done at my office. I think, as to Mr. Jenison, I paid the money to him at his office, but I will not be certain of that; that is my impression. No; I am mistaken. I rendered the account to him at his office. There was no money coming to him. That money was used entirely to pay the expenses of the sale. I rendered an account to him showing what expenses I had paid. There was no money paid to him at all, I do not think. My impression is that the loan was not a sufficient amount to pay all the expenses.

Q. Now, the deed in evidence in this case from Emma Taylor to Martha McIntire, was that, in fact, made by Emma Taylor or not?

408 A. It was.

Q. Did you see her make it?

A. I am not really positive that I saw her make it; the deed was in my possession afterwards, though.

Q. Do you say, Mr. McIntire, that signature was not made by your sister, Emma T. McIntire?

A. Most certainly I say that. My sister, Emma T. McIntire, had nothing whatever to do with it and knew nothing of the transaction: besides, my sister, Emma T. McIntire, never signed her name "Emma Taylor," nor did she ever write the name "Emma Taylor"

to my knowledge, and, further, my sister, Emma T. McIntire, was quite well known to the justice who took the acknowledgment.

Q. How well known was she to Squire Hermick, who took that acknowledgment—that is, how well known was your sister, Emma T. McIntire, known to him?

A. He knew her by name; he knew her from seeing her in my office; he knew her from meeting her, I think, at his house; if not in his house, at his son's house or in company with his son or his son's wife.

Q. How near was your office to Justice Helmick's office?

A. Well, for awhile Justice Helmick's office was five or six doors west of me; afterwards it was moved into the basement of Wanrer's building, which was immediately adjoining the building in which my office was located.

Q. How frequently was Justice Helmick in your office?

A. He was in there three or four times a week and sometimes every day.

409 Q. How frequently was your sister, Emma T. McIntire, in your office?

A. Well, for some time she was there daily as a clerk.

Q. What I want to get at is whether or not Justice Helmick was in the constant habit of meeting your sister, Emma T. McIntire, in your office or not.

A. He was.

Q. And whether he knew her handwriting.

A. I presume he did.

Mr. MACKEY: I object to any presumption on the part of the witness.

WITNESS: I can say positively that he did, because he had seen her handwriting.

Mr. MACKEY: I object to the testimony on the further ground that this is not the way to show a man's familiarity with another's handwriting.

Q. Do you know whether your sister, Emma T. McIntire, knew Emma Taylor or not?

A. I think I have heard her say that she met her two or three times in my office.

Q. A Mr. Brown has testified in this case to your having come to his house, on E street southwest, in a buggy with a lady on a certain occasion. Who was that lady?

A. That lady was Emma Taylor, and I took her down there because he wanted an extension of her note.

Q. The note held by her?

A. Yes, sir; an extension of his note or some further time

410 on some payment due her.

Q. Well, a Mr. Darneille has testified to certain taxes on property that stood in the name of Emma Taylor having been paid by your checks. What have you to say as to that?

A. No doubt they were. I paid by check, principally by check,

the taxes of all my clients, or nearly all of them. At the time the taxes are due I go down with a batch of bills and pay them by my own personal check, and then look to the various owners to reimburse me.

Q. Mr. Swartzell has testified in regard to the history of the title to No. 2112 I street northwest, involved in a suit similar to this, and he has testified in this case that a deed was made to him for that property and then immediately to Martha McIntire, and the testimony shows that this deed was subsequently cancelled and he made one to Emma Taylor, and that Emma Taylor afterwards conveyed to Martha McIntire. Will you state succinctly the history of that transaction?

A. The property No. 2112 I street, known as the Southey property, was put up at public sale. I was the trustee. I thought it was knocked down to Martha McIntire, but the auctioneer had marked it to Mr. Swartzell, and, upon my stating that, Mr. Swartzell made a deed immediately to Martha McIntire. Subsequently it was sold to Emma Taylor. Her attorney ascertained that there was no deed on record from Martha McIntire, and then, to save expense, I had a deed made from Mr. Swartzell to Emma Taylor, and the deed to Martha McIntire was cancelled.

Q. That, you say, is the true history of that transaction?

A. Yes, sir; that is it.

Q. Well, I want to know whether the Emma Taylor who
411 appeared in that case was a *bona fide* person or whether she was a myth.

A. She was a *bona fide* person; no myth about her.

Q. And was she or not the same person who appeared in this case?

A. She was the same person.

Q. Was she the same person who bought the Pryor property and all the other properties where conveyances are traced to her in these several suits?

A. She was.

Q. What relation is Mrs. Laura Galliher, who has testified in this case, to you?

A. She is my niece.

Q. The daughter of whom?

A. The daughter of the late Henry McIntire, my brother.

Q. I want to know whether your sister, Martha McIntire, and you, before your marriage, ever lived in the house of Laura's father; and, if so, when and where.

A. When my brother, Henry McIntire, was first married he lived at our house in Philadelphia—my father's house, I mean—where I lived, and after I came to Washington, in 1863, I lived at his house until the time of my marriage, in 1866. My sister, Martha McIntire, lived at his house in 1865 or 1866 and also in 1876 and 1877, in the Centennial year. She lived there altogether two or three years and kept house for my brother after the death of his first wife.

Q. How old was Laura when you lived there?

A. She was a very little girl, in her teens—twelve or thirteen years of age, I should say at a guess.

412 Q. Well, now, can you tell us by what name your sister Emma T. McIntire was known and called in the family of your brother Henry?

A. I never heard them call her by any other name than "Aunt Emma" or "Aunt Emma McIntire."

Q. Was she ever known or called in that family, to your knowledge, "Emma Taylor"?

A. She was not, and I never heard such a thing until Mrs. Galliher herself stated it on the stand, because my sister's middle name is not "Taylor."

Q. What is it?

A. She really has no middle name. She was christened "Emma McIntire." During her early years my father nicknamed her, and nearly all of the children called her "Tots" or "Tintyush," we used to spell it; and after she grew up, finding that there were several Emma McIntires in the family, and that her letters sometimes went astray, she merely adopted the letter "T" to distinguish her, taking the letter T from the baby name that my father called her.

Q. What are the relations, I mean the relations of amity or hostility, between you and your niece Laura Galliher?

A. On her side they have been very hostile ever since I read an opinion to her from Judge Fellows respecting the will of my uncle David, wherein he said that she and her family would not come in or take part under the will. She acknowledged her hostile feelings towards me when she was on the stand.

Q. Has she or not ever since that been showing her hostility to you and to the other members of your immediate family? I mean your sisters.

413 A. She has been showing that hostile feeling in every way she could. It was she who suggested these cases, as my sister Martha McIntire stated the other day, by intimating the untruth that Emma T. McIntire was Emma Taylor. She knew it was a falsehood when she uttered it. She never heard my sister Emma T. McIntire called Emma Taylor. I defy anybody to come on the stand and say that they ever heard my sister called Emma Taylor or her name is Emma Taylor McIntire. I defy anybody to do that except that branch of the family. They get their cue from her. She has opposed me in everything I have done in connection with the litigation over the estate of my uncle; but before I read her that opinion of Judge Fellows which I have alluded to she was quite friendly and always had been previous to that.

Q. I will ask you whether prior to your having read that opinion of Judge Fellows to her what aid did she contribute as to probating the will of your uncle David McIntire.

A. She and her husband and sister had united with me to prove the signature of the deceased——

Mr. MACKEY: I object to this as being utterly irrelevant to this case or to any one of these cases.

WITNESS (continuing): To testify as to his signature, and to testify as to where the will was found; and she approved of everything that I did and the course I pursued in connection with that estate. She then thought that she would receive something under the will, and I was of that impression also.

Q. When she learned to the contrary, then what?

414 A. When she learned to the contrary she was hostile to me, slammed the door in my face, insulted me or tried to insult me on the streets, and has pursued me from time to time in every way she could.

Q. What, if anything, has she done in attempting to break the will that she assisted in proving?

A. She has been the witness to whom my opponents have looked all the while; she is their principal witness, and she has exerted herself to the utmost to defeat the will; she admitted that when on the stand in this case.

Q. Well, now, her brother, William E. McIntire, instituted two equity suits against you, which have been referred to in the proceedings in this case. What had Laura Galliher to do, if anything, with those suits?

A. She was the prime mover in those suits; she was present at every session of testimony; she made frequent suggestions to the witness, objected to certain line of cross-examination, and it was palpable from her action and from her language that she took a deep interest in those cases.

Mr. MACKEY: I desire to object to this testimony without repeating the objection at every stage of this testimony—that is, I desire it understood that this whole line of testimony is objected to.

Mr. HENKLE: All right.

Q. Now, Mr. McIntire, she was a witness in that case, was she not?

A. She was.

415 Q. And I want to know whether or not it was attempted to establish by her testimony the identity of certain signatures purporting to be that of Emma Taylor with that of your sister, Emma T. McIntire.

A. It was. She never saw my sister, Emma T. McIntire, write her name; at least, I believe she has not.

Q. Now, certain cards or slips, upon which the name of Emma T. McIntire was written, were produced and handed to her upon cross-examination in those cases by me, and she was enquired of as to whether those were the genuine signatures of Emma T. McIntire or not, she having previously testified that she knew her signature. What did she say in regard to that?

Mr. MACKEY: Objected to as calling for hearsay testimony.

A. She stated that those were the signatures of my sister, Emma T. McIntire.

Q. Most of them?

A. Most of them. I should say that the rest resembled the signature.

Q. How and where were those specimens of handwriting prepared?

A. Not one of those cards were written by my sister, Emma T. McIntire, and she never saw them. They were prepared in Judge Helmick's office, as Judge Helmick stated to you some while ago, and were made at his suggestion to show that Laura Galliher could not know the signature of Emma T. McIntire.

Q. They were made for the purpose of entrapping her?

A. Yes. I knew quite well that she never saw Emma T. McIntire write her name. I doubt whether she ever saw her write anything.

416 (NOTE.—Counsel for the defendants states to the counsel for the complainant that he now comes to the branch of the testimony offered by the complainant where one Eller has testified and who brought one of these series of suits, but which has abated by the death of the wife of the said Eller, who claimed to be the owner of the property involved in that suit, and counsel for the defendants now asks the counsel for the complainant what they claim from the testimony of the said witness Eller in this case, with a view to directing the examination of Mr. McIntire to that point and for the purpose of saving the necessity of going over or answering the whole of the testimony of the witness Eller.)

Mr. MACKEY: We offer the testimony of Eller to this and the others of this series of cases, and if the counsel for the defendants does not object we will select such portions of Eller's testimony as we intend to rely upon in this series of cases, and we offer it only for the purpose of maintaining the issue on our part raised that these deeds executed to and by Emma Taylor are fictitious. The following, then, is the testimony which we shall rely upon (reading from complainant's testimony in the Pryor case):

"Q. Your wife and yourself have brought a suit against Edwin A. McIntire, have you not, to recover some property?

A. Yes, sir.

Q. Do you know Edwin A. McIntire personally?

A. Yes, sir.

Q. You made, I believe, or at least there is of record, a deed, signed by you and your wife, to one Emma Taylor of property on First and Q streets northwest, in this city. I want to ask you if you ever saw Emma Taylor.

A. No, sir; not to my knowledge.

Q. Will you state the circumstances under which you executed that deed—that is, how you came to execute it?

* * * * * * *

417 A. My wife bought the property, and she took sick and we moved out of it, and after awhile after we went out it took fire, a few days afterwards. I had no money to fix it up, and me

and a friend of mine went to Mr. McIntire and borrowed $350, I think it was, to fix up the house.

Q. Did you and your wife sign a note?

A. I gave a deed of trust, I think. Mr. McIntire did not give me the money. He told me that he would have the house fixed with the money, and after awhile I took sick, and shortly after, when I was able to walk, I went and looked at the house, and hardly anything was done to it. I then went to see Mr. McIntire, and he told me that the carpenter had run away with the money, so the house was not fixed any further. I took sick and was in bed for a long time, until the interest came due. Then Mr. McIntire came after me and wanted the interest. I told him I had not money to pay it. I was in bed then, laid up with paralysis of the head, so that I can hardly open my teeth from that time; so I told him I had no money, I could not give him any, and he could do what he wanted, and I did not want to be bothered with it.

Q. Did he ask you there about fixing up any papers or anything?

A. He asked me at the same time he was there. He says did I mean that I would not care about the property. I says, Yes; I cannot pay and I cannot bother with it, and you can do as you please. He went off and came back in about an hour and a half afterwards and gave me a paper to sign, and I signed the paper in bed. Afterwards I found out from Mr. Burkhart, who went with me when I got this money from Mr. McIntire, that it was a deed.

Q. When was that?

A. Something like 1882 or 1883.

Q. I will ask you of what country you are a native.

A. Germany.

Q. How long have you been in this country?

A. Thirty-three years.

Q. From the time that Mr. McIntire told you that he would fix up the papers and went off until he came back was about how long?

A. About an hour and a half.

Q. Did he mention the name of Emma Taylor to you at that time?

A. No, sir.

* * * * * * *

Q. Was any money paid to you at that time?

A. No, sir.

Q. Or at any time since?

A. No, sir.

* * * * * * *

Q. Have you ever seen Emma Taylor at any time since then?

A. Not to my knowledge."

By Mr. HENKLE: Now, Mr. McIntire, I want you, if you please, to state what were the facts with regard to the statements
418 contained in the testimony of the witness Eller which has just been read in your hearing from this record.

A. His testimony is untrue. He came to me with Mr. Bigelow,

an attorney of this court, and another gentleman, and asked me to get a loan for him upon property at the corner of First and Q streets. The property then had been badly burned. At their suggestion I went to the house of Mr. Eller, on O street near Seventh, and he and his wife entered into a contract with me to procure a loan on the property sufficient to pay off the first deed of trust and some bills that he owed, the balance to be used for repairs. I negotiated the loan with Emma Taylor, and a deed of trust was made accordingly. The money was paid principally to Mr. Bigelow, who represented the holder of the trust—the first deed of trust—or was himself the holder; I do not know which.

Mr. BOARMAN: Which Bigelow is that?

WITNESS: Mr. Bigelow who is now an attorney of this court. This amount I paid to him on the order of Mr. and Mrs. Eller; every payment I made solely upon their order. Mrs. Eller being the owner of the property, I never made any payment without having her signature, and the payments I made more than covered the amount of the loan. When the loan fell due Mrs. Eller told me that she never wanted to see the property again. They had failed to obtain a permit to repair it. She said that she wanted nothing more to do with it. She asked me if I would see "Jake," as she called her husband, and he asked me not to bother him.

419 Then, at the suggestion of some one in the house there, I was asked whether I could have the holder of the note take the property and surrender the note. After a delay of several days, not of an hour and a half or any short time, as he suggests, I went back to him, having seen Miss Taylor in the meantime, and told him that the holder of the note would consent; accordingly I prepared a deed, and the deed was sent to his house and he acknowledged it—not in my presence, but in the presence of some friend of his and before Edwin J. Sweet; and subsequently, upon a notice from him, or Mrs. Eller, or Mr. Sweet, or some of his friends, I went to the house with Miss Taylor; but, as the front part of the house was used as a lager-beer saloon, she declined to go in. I went inside with the note. Mrs. Eller was then conducting the beer saloon; there was quite a crowd there, and she directed me to go upstairs and fix it with her husband, and I got the deed from him and turned over the cancelled note.

Q. Have you in your possession the deed made by Mrs. Eller to Emma Taylor, to which you have just referred?

A. I have.

Q. Will you produce it?

A. Here it is.

Mr. HENKLE: I here give that deed in evidence.

(NOTE.—And the same is herewith filed in evidence and marked "Exhibit A. H. No. 29.")

WITNESS: I see that this deed is witnessed by George F. Bluethey a German name; I presume a friend of Mr. and Mrs. Eller.

Q. You say that Emma Taylor went with you?

420 A. She went with me to his house.

Q. Was she the holder of the note?
A. Yes.
Q. To whom was the deed delivered?
A. The deed was delivered to me and handed to her.
Q. What did you do with it?
A. I immediately gave it to her when I came out of the door.
Q. What did she do with it?
A. Placed it on record, I presume.
Q. And where *do* you get it?
A. It came to me with the title papers of that property when it was conveyed to my sister. It came to me from my sister direct.
Q. What disposition did Emma Taylor subsequently make of that property?
A. She conveyed it to my sister, Martha McIntire.
A. A witness on behalf of the complainant in the case of Brown *vs.* McIntire by the name of Frizzell has testified that he went to your office, having had some difficulty with you about the water pipes at the house No. 1216 I street northeast, and said to you in the presence of your sister, Emma T. McIntire, "I have hunted up the records and Emma Taylor is the owner," and that you made no reply. What are the facts about that testimony?
A. Mr. Frizzell owned the house to the east of No. 1216 I street northeast.
Q. And who owned that house?
A. No. 1216 I street northeast was owned by my sister, Martha McIntire. I was her agent. I was notified by the tenant of that house that the water pipe was cut off. I went down there to
421 see about it and found that Mr. Frizzell had torn the water pipe up and made it useless. I had quite a loud and long talk with him in reference to it and feeling was exhibited on both sides. Subsequently he complained that the sewer on these premises, No. 1216 I street northeast, leaked into his cellar and he had the case brought before the police court. Before it had gone there, however, he asked me who the owner of No. 1216 I street northeast was, and I refused to give him the name. He came to my office rather triumphantly one day and said that he had found the name and found that it was Emma Taylor, and that she lived at the "Frederick." I made no reply to that at all. I did not want to talk to the man.
Q. That was all of that?
A. Yes. When the case was called in the police court I was put on the stand and interrogated as to who the owner was, and I stated who the owner was.
Q. Who did you state the owner was?
A. I stated that Martha McIntire was the owner. Mr. Dumont was the prosecuting District attorney at the time and he questioned me.
Q. What interest had you, have you now, or have you had at any time in this Pryor property in controversy in this case?
A. No interest whatever.

Q. Who furnished the money to build the houses and to pay for the ground?

A. My sister, Martha McIntire.

Q. Did you or not furnish any part of it?

A. Not a cent of it.

Q. Where did your sister, Martha McIntire, get the money
422 which she invested in these premises?

A. By her savings from time to time and by various investments which she made through my brother and myself, which paid her quite handsomely; and the money was turned over and over, sometimes every fifteen or thirty days, at a very high rate of interest.

Q. In the purchase of notes?

A. In the purchase of notes principally.

Q. Were you engaged in the business of purchasing notes for your clients at that time, along in those years?

A. I was; both mercantile paper and notes secured by deed of trust.

Q. And how extensively did you deal in this way for your sister, Martha McIntire?

A. Well, from time to time, when any good note was offered, if I had no money in hand that belonged to her which I could invest I would write to her. She invested several thousand dollars, and it was turned over so often that it would be hard for me to say what the whole amount of her money was. I know that very frequently it surprised me when I wrote to her and suggested that she take part of the note to have her say that she would take it all. She lived very economically. She saved almost everything she obtained. She paid no board at home and the investments she made paid her handsomely; sometimes eighteen per cent. a month.

Q. Well, upon whose judgment did she make her investments in notes or in real estate?

A. Before my brother's death, in 1879, being seven years my senior, he managed the matter principally. He and I held
423 together jointly an account in the German-American bank, where we deposited moneys received from her and where we deposited notes for collection. Since his death she has not made very many transactions in notes. All of them, however, have been through me, and all the property she bought has been through me, by my advice, sometimes without seeing the property at all.

Q. Mr. McIntire, in making these purchases of real estate for your sister, Martha McIntire, has she or not ever been brought in contact with the vendor of the premises?

A. I cannot call to mind every case, but I know in several cases she has not come in contact with them at all. She bought other properties than those mentioned in these suits.

Q. Well, did she or not leave the transaction of the business wholly and entirely to you?

A. It was left to my judgment entirely, and in many cases her transactions were made by me out of her presence.

Q. How were the payments made for properties that she bought?

A. She principally paid me by cash or by check from my sister. She usually got checks from her sister, but I do not know whether they were turned over to me or not.

Q. What sister?

A. My sister, Emma T. McIntire.

Q. Why was that?

A. She and my sister, Emma T. McIntire, deposited jointly in the Second National bank in the name of my sister, Emma T. McIntire.

Q. The account was kept in Emma's name?

A. In Emma's name solely. When Martha wanted any
424 money she and Emma would go to the bank together and draw it.

Q. Upon the check of Emma?

A. Yes; if she wanted money that was in the safe-deposit compa[illegible] they went there together—that is, I presume they went together. They would tell me they were going, but I did not know whether they went or not.

Mr. HENKLE: Do you think of anything else, Mr. McIntire, you desire to say?

WITNESS: In regard to those deeds?

Mr. HENKLE: I do not propose to take up today that branch of the testimony—that is, the testimony of the expert as to the deeds.

(Adjourned.)

425 FEBRUARY 18, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who deposes and says, being recalled for further direct examination.

By Mr. HENKLE:

Q. Were you present at the sale of the Pryor property on F street to Jenison?

A. I was.

Q. Did you hear the auctioneer knock it down?

A. I noticed him when he knocked the book with his right hand, indicating that the property had been sold.

Q. How was it sold at that time; was it sold at so much in gross or so much per foot?

A. It was sold by the square foot and was kocked down that way.

Q. What price per square foot?

A. It was knocked down at thirty-one cents per square foot. Mr. Coldwell did not announce the selling price at all; but, as is the custom, he asked if they were all done bidding, made his three calls in accordance with the usual custom, and said, "Going, going, gone." As he used the word "gone" he threw his hand down on the auction book, and then marked on his book: The property has been sold to Jenison for thirty-one cents.

426 Q. How was the bidding—so much per square foot?

A. Yes, sir; all through.

Mr. MACKEY: Did you see him mark it on his book at the time of the sale?

WITNESS: Yes; I remembered telling him particularly how to spell Mr. Jenison's name. I bid in the name of Mr. Jenison.

Q. Exhibit A. H. No. 6 in this Pryor case seems to be a letter addressed to you by Mr. Jenison on the 13th of April, 1882, directing you to advertise the Pryor property for sale. Did you receive that letter?

A. I did.

Q. Did you act upon it?

A. I did.

Q. What did you do in consequence of the direction therein contained?

A. I saw him directly after receiving the letter and subsequently advertised the property for sale.

Q. Well, did you have any conversation with him upon the subject of that letter?

A. Yes, sir; I did.

Q. Well, what was it; what did he say about it?

WITNESS: That was dated—let me see that letter.

Mr. HENKLE (handing Exhibit A. H. No. 6 to witness.): It is dated the 13th of April, 1882.

A. I urged him to allow me to sell the property. This
427 was written to me when his own note was on the property, showing that he felt some hesitancy about being able to pay his own note. I thought, when you first read it, that it was a letter written before the Pryor note fell due, but it is in regard to his own note. I urged him to let me try to sell the property at private sale, as he was anxious to have the matter closed up and get it off his hands. I subsequently received authority from the holder of the note to advertise the property, and on that authority I advertised, but I had seen him several times after the receipt of this note before I advertised by the authority of the holder of the note, hoping he might take the property rather than put it to sale—that is, that he might pay the note off or do something of that kind.

Q. Well, did you see him after the sale?

A. That was not a public sale. It was sold privately to Miss Taylor. After receiving that authority and after some time had elapsed—I did not advertise the property, I had gotten this a little confounded with other property transactions—I saw Miss Taylor at his suggestion and had her agree to take the property upon the surrender of the note which he had made on the property. He had stated to me that he wanted to get rid of the place, and that he did not believe he could realize anything out of it.

Q. You made an arrangement with Miss Taylor to take the property and pay the debt—that is, to take the property from him and surrender the note to him?

A. Yes, sir; he suggested it himself, and when on the witness stand he said that he suggested it.

428 Q. As a matter of fact, he suggested it, and you say that the agreement was carried out in accordance with his suggestion?

A. Yes, sir.

Q. Did you ever talk with him about it afterwards?

A. Nothing except incidental conversations when we would meet and he would say something about the property.

Q. Will you please look at the paper now shown you, marked Exhibit A. H. No. 7 in this Pryor case, and explain what that is?

A. This is dated U. S. Treasury Department, April 23, 1890. It is a memorandum which was sent to me by Mr. Jenison from the Treasury Department informing me that the attorney for Pryor had interviewed him and asking me in regard to it.

Q. Do you want to say anything more about it?

A. My reply is indorsed on the back of this paper.

Q. Well, what is it?

A. It is dated April 24, 1890, and is in these words:

"D'R SIR: The property alluded to in your note of yesterday was sold at public auction & knocked down to you as holder of the note & as highest bidder, it being bid in for you to save you loss. There was nothing irregular about it. It is rather late — day for them to inquire & complain. Pray who was the attorney?

V. R., E. A. M."

I never received any reply to that from him. He met me on the street afterwards and he explained this by saying——

Mr. MACKEY (interposing): I object to what Mr. Jenison stated to Mr. McIntire on the street.

Mr. HENKLE: I ask for it.

429 WITNESS: He stated in substance what is in this memorandum (Exhibit A. H. No. 7)—that is, that they had inquired of him in regard to the sale and he had forgotten all about it. He asked me then for the particulars. I suggested to him that if he would come to my office I would look up the papers for the information and advise him, but he never came until after this bill was filed.

Q. Did he say who the attorneys were who called upon him?

A. I think he said at the time he could not recall their names.

Mr. MACKEY: Objected to.

WITNESS: But he said since that it was the attorneys in this case.

Q. Look at Exhibit A. H. No. 8——

WITNESS: As to this Exhibit A. H. No. 6, where is that?

Mr. HENKLE: Do you wish to see Exhibit A. H. No. 6?

WITNESS: Here it is. In this letter (Exhibit A. H. No. 6) Mr. Jenison says, "I shall doubtless have to submit to a sacrifice by forced sale," and then afterwards in the letter he says, "I wish you would advertise and do the best you can in its disposition." I did advertise the property, but it was advertised for sale at private sale. I put my board on it as a real-estate broker for quite a little while,

stating that the property was for sale, but I never received any bid or any inquiries in regard to it.

Q. Look at Exhibit A. H. No. 8 in this Pryor case and
430 state what that is.

A. This is a release of liens signed by the different materialmen and workmen on the property on F street known as the Pryor property, showing that they had received full payment from Martha McIntire and that they released to her all demands and claims.

Q. Who obtained that?

A. I obtained it from Martha McIntire. There were several amounts due to them, but in getting the final receipts this was gotten in accordance with a custom I was used to in Philadelphia in having a release signed by all the workmen and materialmen, and this was given to her at the time.

Q. Look at Exhibit A. H. No. 9 in this Pryor case and state what that is.

A. These are the several receipts given to Martha McIntire for the payment of the party walls adjoining the property on F street known as the Pryor property, and also the measurements of those walls made by Mr. Entwisle. These amounts were paid by Martha McIntire through me.

Q. Were they paid from her money or yours?

A. Paid entirely from her money, as all the payments on the houses were.

Q. I hand you Exhibit A. H. No. 10 in this Pryor case and ask you to state what that is.

A. This is a check of Joseph Forrest, trustee, made to me as part payment of property which he bought from Emma Taylor on R above 16th street. This and another check were made to me so that I could take my commissions out of them as broker for sale of the property.

431 Q. What property was it?

A. It was property on R above 16th street or 17th street; above 17th street, I think it was.

Q. Will you look at Exhibit A. H. No. 11 in this Pryor case and examine what that is?

A. This also is a check of Joseph Forrest, as trustee, given for the like purpose that the preceding check was and made to my order as agent. I was the agent of Emma Taylor in selling the property to him, and his agent in buying the property, you might say.

Q. Look at Exhibit A. H. No. 26 in this Pryor case and state what that is.

A. This is the deed of trust given by Jenison and wife to myself as trustee to secure the payment of $425 to Emma Taylor.

Q. What was that for?

A. When the note of Jenison became due—no, when the note held by Jenison became due on the F-street property the property was knocked down to him, but he declined to pay any of the expenses of the sale, trustee's commissions, advertising, and the like,

and taxes also, which were a considerable sum. It was necessary then to make a deed to him and take a deed of trust from him to get somebody to loan the money before I could complete the transaction. It was rather a novel position to be in as trustee. After talking with him for awhile about it we concluded that the only way, for me to give him a deed and then for me to take a deed of trust from him, and then find a purchaser for the note secured by the deed of trust, and this is the deed of trust given under that arrangement. The deed of trust covered the expenses of the sale and
432 the taxes and the like.

Q. Well, was the property afterwards sold under this trust?

A. When this trust fell due, then the property was transferred from Jenison to the holder of the note, Emma Taylor, and the note surrendered to him. That was done at his suggestion, as he did not wish to carry the property any more.

Q. Now, Mr. McIntire, do you think of anything else you wish to say outside of the examination of these Emma Taylor deeds?

A. No, sir; I cannot recall anything just now.

433 MARCH 2, 1892.

* * * * * * *

EDWIN A. MCINTIRE, who deposes and says, being recalled for further—

Direct examination.

By Mr. HENKLE:

Q. William F. MacLennan was examined as an expert in handwriting on the part of the complainant in this cause, and he was shown by the counsel for the complainant five original papers taken from the court papers in the matter of the estate of David McIntire, No. 1532, of the orphans' court of the District of Columbia, the said papers being as follows: (1) A paper filed April 11, 1884, and indorsed on the back, "Petition of Martha McIntire, praying that Edwin A. McIntire be appointed administrator, *c. t. a.*, and assent of three other heirs thereto," and purporting in the body thereof to have the signature of Emma T. McIntire, among others. Will you state whether you know what that paper is and whether you are familiar with it?

A. I am.

Q. And whether you saw it prepared—I do not know but what you prepared it yourself?

A. I did myself.

Q. And whether you saw Emma T. McIntire sign it or not?

A. I did.

434 Q. Will you please state whether you know that the signature to that paper is her genuine signature?

A. Yes, sir; it is.

Q. Also a paper filed July 31, 1885, and indorsed on the back, "Answer of Martha McIntire and Sarah McIntire to the rule to show

cause, etc.," and purporting in the body thereof to be signed by Emma T. McIntire, among others. State whether you know what that paper is.

A. I do; and I know that signature to be hers.

Q. Did you see her sign it?

A. Yes.

Q. Also a paper filed August 5, 1885, and indorsed on the back, "Petition of Martha, Emma T., and Sarah McIntire for partial distribution," and purporting in the body thereof to be signed by Emma T. McIntire, among others. Do you remember that paper?

A. I do; and I remember seeing that signed by Emma T. McIntire.

Q. You know that to be her genuine signature?

A. Yes.

Q. Also a paper filed March 5, 1886, and indorsed on the back, "Petition of Sarah McIntire and others, praying the court to allow S. S. Henkle, Esq., att'y, $500 out of funds in the custody of the court belonging to said estate, and order of court directing the register of wills to pay the same," and purporting in the body thereof to be signed by Emma T. McIntire, among others. Do you remember that paper?

A. I do; and that is her genuine signature to that paper.

435 Q. And also a paper filed March 13, 1891, and indorsed on the back, "Petition of four legatees that the assets be turned over to the administrator," and purporting in the body thereof to be signed by Emma T. McIntire, among others. Do you remember that paper?

A. I do, and I know that to be the genuine signature of Emma T. McIntire.

Q. The same witness was shown the deed executed by Emma Taylor to Alfred Brown on May 14, 1883, filed as "Exhibit A. H. No. 12" to the testimony in this case, and was asked whether the same person wrote Emma Taylor to that deed who wrote the name Emma T. McIntire to the five papers just referred to. Will you look at the signature of Emma Taylor to this Exhibit A. H. No. 12 just handed you and state what you know as to that signature?

A. That signature was either made in my presence or else the paper was handed to me immediately after being signed and acknowledged.

Q. By whom?

A. By Emma Taylor.

Q. Let me ask you whether you know the handwriting of your sister, Emma T. McIntire.

A. I know it quite well. She was employed in my office for a number of years, and I have seen her writing many times.

Q. Will you look at that signature of Emma Taylor to said Exhibit A. H. No. 12 and state whether that was or could have been written by Emma T. McIntire?

A. In my opinion it was not and could not have been writ-

436 ten by Emma T. McIntire.

Mr. MACKEY: I object to the witness giving his opinion about it.

Q. You say it was not?
A. I know it was not written by Emma T. McIntire.
Q. You say that it was either written in your presence by Emma Taylor or——
A. (Interposing) Or was handed to me by her after she had acknowledged it before Justice Helmick.
Q. Handed to you by Emma Taylor?
A. Yes.
Q. Will you look at the name of William Helmick attached to said Exhibit A. H. No. 12 as a subscribing witness and say whose signature that is?
A. That is the signature of William Helmick. I have seen him write many times, and I know his handwriting well.
Q. Will you tell us whether you know of your own knowledge that he was acquainted with Emma Taylor or not?
A. I have seen them together quite a number of times. I know that he knew Emma Taylor. He stated to you at one time that he was well acquainted with her. He also knew my sister, Emma T. McIntire, quite well. The two women were not in any way alike in appearance at all—no resemblance whatever between the two, and there was no possibility of his having confounded them. There is no resemblance in their writing, in my opinion, except what is usual to persons going to school and learning the same style of writing as is taught in Philadelphia.

437 Mr. MACKEY: I object to the witness giving his opinion.

Q. Do you remember this transaction?
A. Yes.
Q. I want to know whether you were present at the time of the acknowledgment of this deed (Exhibit A. H. No. 12 in this case) or not—that is, do you remember whether you were present or not?
A. I think I was; I have not a very clear recollection of it, however.
Q. Well, when did you get possession of this paper (said Exhibit A. H. No. 12), this deed?
A. If I did not go with her myself personally to Justice Helmick's office it was delivered to me within a few minutes after it was acknowledged by Emma Taylor herself; I think it more than likely that I went with her, because that is my custom. I remember going with her several times to Justice Helmick's office for him to take her acknowledgment; not to go and introduce him to her, but in order to keep the paper or papers, whatever it might be.
Q. Will you look at the paper now handed you, filed as Exhibit A. H. No. 14 in equity cause No. 10745, of William E. McIntire *vs.* Edwin A. McIntire, and purporting to be a deed from Emma Taylor to Joseph Forrest, bearing date the 3rd day of December, 1882, and state what you know as to the signature of Emma Taylor to that deed?

A. In this deed I know that to be her signature; I saw her sign it there and I remember it distinctly.

Q. What do you know as to its being in the handwriting
438 of your sister, Emma T. McIntire?

A. I know it is not the signature of Emma T. McIntire. I know it to be the signature of Emma Taylor. I saw Emma Taylor write it.

Q. What do you say as to whether the signature of William Helmick as a subscribing witness to that deed is his genuine signature or not?

A. It is his genuine signature. It was done in my presence.

Q. Was the acknowledgment taken in your presence?

A. It was, and signed by him while I was in his office and while I was alongside of his desk.

Q. I hand you a paper filed as Exhibit A. H. No. 1 to the testimony in the case of Elizabeth Brown *vs.* Edwin A. McIntire *et al.*, equity, No. 12977, purporting to be a deed from Barbara Brown and Emma Taylor to Martha McIntire, and bearing date the 25th of April, 1881. Will you please look at that deed and state how you account for the apparent change of ink or the different color in the ink in parts of the deed?

A. Part of this deed was written in my own office and part of it in Justice Helmick's office. I wrote in my office, "Barbara Brown, city of Washington, District of Columbia," intending to make it a deed from her alone to David McIntire, my uncle, who was then at my office every day; subsequently he declined to take the property and I then made the transfer for the benefit of Martha McIntire. I expected to get cash rather than the property, which suited her better, but he declined the property. I wrote the name Emma Taylor in Justice Helmick's office, and at his suggestion I
439 made the one deed answer for both of them. I proposed writing two deeds, one from Barbara Brown and one from Emma Taylor, but at his suggestion the change was made in this deed and Samuel Peugh signed this deed as a witness, and the deed was altered in other regards so as to make the number plural instead of singular and to make it feminine gender instead of masculine gender where the pronouns occur.

Q. Martha McIntire seems to have been written over an erasure in two or three places. How do you account for that?

A. It was originally the name of David McIntire, but that was scratched out. If the glass of the expert had been strong enough he could have discovered it, I think. I scratched out the name of David McIntire because he declined to take the property or hesitated about it, and I altered the rest of the deed so as to conform to that alteration.

Q. Were you present at the signing of that deed and its acknowledgment?

A. I was. I remember the circumstances quite well.

Q. Well, now, will you state whether or not Barbara Brown had signed the paper in your office or where she signed it?

A. She signed it in Justice Helmick's office. Both signatures

were made in that office. The color of the ink will show that. However, I remember it quite well. I remember that Emma Taylor also signed there. I remember the conversation as to the subscribing witnesses, it being usual to have three witnesses to a deed.

Q. What was the conversation?

440 A. It was suggested by Justice Helmick that I need not go to the expense or trouble of preparing another deed, but make the one deed do, and that Mr. Peugh would sign as a witness and Mr. Peugh would remember the circumstance.

Q. Well, now, that deed purports to be signed by Floyd Harlston and William Helmick and Samuel A. Peugh as subscribing witnesses. State whether or not you saw those three persons sign their names as witnesses.

A. I did. It was all done in my presence and in Justice Helmick's office.

Q. And you say that the signature of William Helmick is his genuine signature and was made in your presence?

A. Yes.

Q. And you say the same as to the signatures of Samuel A. Peugh and Floyd Harlston?

A. I do.

Q. And you have already said that Emma Taylor was well known to Justice Helmick?

A. I have seen him in her presence many times. Well, I say many times; quite a number of times.

Q. How was it about Barbara Brown?

A. I do not know whether she was acquainted with him or not; I rather think she was not. Mr. Peugh knew her very well.

Q. What do you say, Mr. McIntire, as to your sister, Emma T. McIntire, having made that signature to that deed?

A. I know she did not. I do not believe she was in Washington at that time.

441 Q. The witness Mr. MacLennan says: "I find that the signature Emma Taylor in the deed just shown me (Exhibit A. H. No. 1 in the Elizabeth Brown case), in the first letter 'm' in the word 'Emma' the pen is raised after the second downward stroke, and another character would make it read 'na' instead of 'ma.' I find the same characteristic in the second letter 'm' in the word 'Emma' in the name Emma T. McIntire on the Exhibit A. H. No. 6, filed with the testimony in said equity cause No. 10745." Now, what is that Exhibit A. H. No. 6?

A. That is a card which was produced at the time of the taking of the testimony in William E. McIntire's case; that is one of several cards which were prepared by Justice Helmick.

Q. Do you remember that exhibit very distinctly?

A. Yes, sir; I do.

Q. You say it was what?

A. There were several cards—five or six—prepared by Justice Helmick or at his suggestion to entrap Mrs. Galliher, who had testified that she knew quite well the signature of Emma T. Mc-

Intire. Those signatures were never seen by Emma T. McIntire, and she had nothing to do with them.

Q. Justice Helmick made that Exhibit A. H. No. 6?

A. Yes, sir; and the several other cards. His writing was on the back of them, but it has been obliterated by sticking the cards onto the page of the testimony.

Q. You say positively that Justice Helmick wrote the signature Emma T. McIntire on that exhibit?

A. They were written by him or he caused them to be written; I think they were written at his suggestion. I had intended to produce him as a witness, and he had marked them so as to
442 identify them.

Q. You say that Emma T. McIntire never saw them?

A. She never did.

Q. Well, has it the characteristic which is imputed to it?

A. No, sir; I never saw the signature of my sister, Emma T. McIntire, with any letter omitted. I do not think it possible for her to drop a letter in her name. She taught penmanship in school for awhile and was very careful about her writing.

Q. Is she or not a very expert writer?

A. Yes, sir.

Q. Did she ever clerk for you?

A. Yes, sir; for some time.

Q. You never saw that characteristic in her signature?

A. I never did; I never heard of such a thing.

Q. The expert witness says that the signature William Helmick, as a witness to that deed is not in the same handwriting as that of the signature to the acknowledgment. What do you say as to that?

A. They were both signed in my presence. I know them both to be the signature of Justice Helmick.

Q. I hand you Exhibit A. H. No. 2, filed with the testimony in said case of Elizabeth Brown, purporting to be a deed from Emma Taylor to Martha McIntire, bearing date September 6, 1884, and ask you to state what you know, if anything, about the signature of Emma Taylor to that deed.

A. That signature was made by Emma Taylor in my presence and in my office, and in the presence also of Mr. Richey, as a witness, who was there then at the time.

Q. You say that you saw her make that signature in your
443 office?

A. Yes.

Q. And it seems to have been signed by William Helmick and H. Richey as subscribing witnesses. Did you see the two witnesses sign also?

A. I did.

Q. Were you present at the acknowledgment?

A. Yes, sir; that was done in my office.

Q. The whole of it was done in your office?

A. Yes, sir.

Q. And not in the office of Squire Helmick?

A. No, sir.

Q. As to that signature which the expert refers to as having the characteristic of dropping of one of the strokes in the letter "m," you say your sister Emma has no such characteristic in her signature?

A. I never saw such a thing as that in her signature.

Q. You say that she did not sign that paper?

A. I know she did not; and, besides, I do not think there is a line dropped there. There is one line running into the other. Very frequently signatures are made in that way. I did not notice it until just this minute. The last downward stroke of the first "m" is heavier than the first stroke of the second letter "m." I think I have seen as much handwriting as Mr. MacLennan.

Mr. MACKEY: I object to the witness testifying as an expert in handwriting, he not claiming to be such.

444 WITNESS: I do claim to be such.

Q. This expert witness says that it would appear that the writer of this signature had a disposition to drop characters or portions of letters. Now, what do you say about your sister Emma's habit? Has she any such habit as that?

A. I never heard of such a habit, and I do not believe she ever had such a habit; I know she never had.

Q. This expert witness (on page 147) says: "I find it in the Exhibit A. H. No. 1 in the Elizabeth Brown case, and on Exhibit A. H. No. 5 in the equity cause No. 10745." That Exhibit A. H. No. 5 referred to is a card?

A. Yes, sir; one of the several cards which Justice Helmick prepared.

Q. And which your sister, Emma T. McIntire, never saw?

A. She never did.

Q. They were prepared for the purpose of entrapping another witness in that case?

A. Yes, sir; Mrs. Galliher.

Q. Those cards, Mr. McIntire, were offered to the witness Mrs. Galliher in that case, No. 10745, for the purpose of testing her knowledge of Emma T. McIntire's signature, were they not?

A. They were.

Q. They were offered by you, were they not?

A. Yes.

Q. Or by your counsel?

A. Yes.

Q. And prepared for that purpose?

A. Yes, sir.

445 Q. What did she testify as to these signatures?

Mr. MACKEY: Objected to, as the record will show what she testified to.

A. My recollection is that she testified that one or two of them were the signatures of Emma T. McIntire, and that the others re-

sembled her signature very much and she believed they were made by her.

Q. I show you Exhibit A. H. No. 14 in this Pryor case, purporting to be a deed from Emma Taylor to Martha McIntire and dated the 31st of May, 1884. Will you please take that paper and look at the signature of Emma Taylor and state what you know, if anything, about that signature?

A. This signature was either made in my presence or handed me by Emma Taylor directly after acknowledging it.

Q. Do you know that to be her genuine signature?

A. I do.

Q. And you say upon your oath that your sister, Emma T. McIntire, did not write that?

A. I do.

Q. Do you know whether she ever saw it or not?

A. I do not believe she has. I could not say positively, because it has been out of my possession for some time.

Q. Well, look at the signature of William Helmick as a witness. State whether that is the genuine signature or not.

A. That is.

Q. Did you see him make it?

A. I cannot say that I did see him make it; but I have
446 seen his signature so often and have seen him write so often that I know his signature well.

Q. I hand you now Exhibit A. H. No. 3 in this Pryor case, purporting to be a deed from Mary C. Pryor and Thomas Pryor to Martha McIntire, dated the 3rd of May, 1881. This expert witness says that the word Martha in two or three instances on the face of this deed seems to have been written over an erasure, and there also appears to have — alterations in the personal pronouns in the deed. What have you to say about these alterations appearing on the face of this deed?

A. This deed, like the one I testified to awhile ago, was made first to David McIntire and was declined by him, and then altered to Martha McIntire and noted on the deed itself. I see two erasures and several alterations from "his" to "her."

Q. How did you come to make those alterations?

A. On account of David McIntire declining to take the property, as I said awhile ago. He was always in my office, and when there was any chance at all to make anything in speculation I nearly always referred it to him. I referred this matter to him, and told him that Mr. Pryor wanted to sell the property for a nominal consideration, and the party taking the property to pay the indebtedness, but he made some objection and declined to take it, and afterwards the deed was altered to Martha McIntire.

Q. This deed has no indorsement upon it indicating that it was ever recorded. What is the explanation of that; was it ever recorded?

A. It was never recorded, for the reason that after its de-
447 livery—a few days after its delivery—Martha McIntire ascertained that there were more incumbrances on the property

than she understood there — in the first place, and then she declined to take it.

Q. What was to be the consideration of the deed?

A. Five dollars, which she paid, and "to grant to Mr. Pryor a lease of the property under rent and the payment by her of the deeds of trust."

Q. She took it subject to the deeds of trust?

A. Yes, sir.

Q. And she subsequently declined to take it upon discovery that the incumbrances were larger than she supposed?

A. That they were larger than had been represented by Mr. Pryor himself.

Q. And therefore she never recorded the deed?

A. No, sir.

Q. How did the deed come to be produced in this case?

A. It was shown to Mrs. Pryor, when she was on the stand, to identify her signature. She had testified that she never signed or made any other deed. That was offered to refute that testimony also.

Q. The expert witness referred to has called attention to the fact that the note, as to the alterations in the deed, was written over part of the "W" in the name "Wm. Helmick." What is your explanation of that?

A. I have no explanation to make. I have no recollection of it. I naturally would not write such a note as that after
448 the witness had signed. I firmly believe it was written before Justice Helmick wrote his name, notwithstanding that testimony of the expert witness.

Q. How about the signature of Justice Helmick?

A. There is no doubt in my mind but that it is his signature. I know it to be his signature, and I signed it there as a witness myself and must have seen him sign it.

Q. Was that paper offered as a muniment of title?

A. Not at all. It was just offered to meet Mrs. Pryor's statement that she never signed but one deed. We produced four deeds which she signed, and this among the rest, to show that she was in error in her statement.

Q. You had prepared and handed to me a memorandum of points as to which you desire to testify. Will you please take that memorandum now and say what you desired to state in regard to the points therein noted?

Mr. MACKEY: I object to that way of examining the witness. We have not seen the paper; it may be full of legal questions and it is an improper way to examine the witness.

A. The majority of the memoranda made here I have already answered. I have a memorandum here referring to Mr. MacLenan's testimony (on page 141) where he refers to the similarity of the capital letters "E" and "T" in the signature of Emma T. McIntire and of Emma Taylor. As a matter of fact, they are like the capitals in the copy writing books used in Philadelphia, where both

of these ladies attended school, I presume, and I have here a copy book such as is used in Philadelphia, showing exactly that style of letters.

449 Mr. HENKLE: I here give in evidence that copy book for the purpose of showing that at the public schools in Philadelphia the capital letter "E" and the capital letter "T," as penmanship was taught in those public schools, was similar to those in the signature of Emma Taylor and Emma T. McIntire.

Mr. MACKEY: To the admission of which we object as clearly irrelevant, it being published in 1873, long after both Emma Taylor and Emma T. McIntire left school—years afterwards; probably twenty-five or thirty years afterwards.

(NOTE.—And the *name* is herewith filed in evidence and marked "Exhibit A. H. No. 30.")

Q. You say that they were both educated in the public schools of Philadelphia?

A. Yes, sir. Emma T. McIntire, to my certain knowledge, and Emma Taylor told me that she had attended school there, and told me the school she attended, which I have forgotten.

Q. When was your sister, Emma T. McIntire, at school in Philadelphia?

A. I know that she was at school in Philadelphia in 1873.

Q. How old a woman was Emma Taylor when she was here in 1881?

A. She was twenty-four or twenty-five years of age in 1881. I am guessing at it, for I did not ask her age. Two or three of the witnesses put her at about that age.

Mr. MACKEY: I object to that copy book further as being manifestly irrelevant and not sufficiently proven to be the copy book used, and because if it was proven would not be proof that they had studied from that book.

450 Q. How do you know that that was the copy book used in the public schools of Philadelphia?

A. I know it because I used the same book myself in the public schools of Philadelphia, the same style of book, the same publication exactly.

Q. That same book?

A. Not that same book, but the same publication; *not* the same edition and the same style of letters. My writing at that time was similar to that.

Mr. HENKLE: Well, your writing at the present time is a good deal like it.

* * * * * * *

451 MARCH 7, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who further deposes and says, being recalled for—

Cross-examination.

By Mr. MACKEY:

Q. How old are you?

A. Forty-nine years of age.

Q. You are a member of the bar of the supreme court of the District of Columbia?

A. I was admitted to the bar, but never practiced. I was admitted as a graduate of the Columbian law school.

Q. When were you admitted?

A. In 1870.

Q. You went immediately into the real-estate business?

A. Oh, no; I was in the real-estate business long before that.

Q. You took a course of study in the law, did you not?

A. Yes.

Q. At what college?

A. At the Columbian college.

Q. You are familiar, then, with the question of the effect of deeds and other contracts in respect to land?

A. Yes.

452 Q. Now, will you please state when and how you became acquainted with the complainant, Mary Pryor, and her husband?

A. I cannot state. I do not know when I became acquainted with them.

Q. How long before this transaction in which you made the loan of $450 in behalf of Mr. Jenison?

A. I had known Mr. Pryor, the husband of the complainant, for a long time; Mrs. Pryor I never spoke to but once or twice in my life, except to say "good morning" to her or "good evening."

Q. You mean a long time before the initiation of this first transaction?

A. Yes.

Q. Have you any idea how long it was before this transaction that you were acquainted with Mr. Thomas Pryor?

A. I have not.

Q. Well, was it four or five years?

A. I have no way of telling. It seems to me that I was acquainted with him a long time before that, but I may be mistaken.

Q. Well, what was the nature of your acquaintance with him—that of a business acquaintance?

A. I had seen him at the office of B. H. Warner & Co., but I knew him before Mr. Warner and I were associated in partnership.

Q. Did you have any business transaction with him or for him?

A. No, sir; not before this transaction of $450. That was

453 the first business transaction I had with him.

Q. You had an office of your own at that time, had you not?
A. When I made this loan I had.
Q. Did he come to your office?
A. He did.
Q. To make the loan?
A. Yes.
Q. Wanted to borrow money, did he?
A. Yes.
Q. What did he tell you he wanted to borrow money for?
A. Now, I do not remember the conversation, but I know it must have been to take up the other loan.
Mr. MACKEY: I do not care what "it must have been."
WITNESS: I have no distinct recollection of the exact cause of his coming there. I know I never went to see him about it nor anybody else.
Q. He wanted to borrow some money?
A. Yes.
Q. Do you remember how much?
A. No, sir; I do not remember the conversation at all, but it must have been $450 to take up the loan, because that is the amount of the loan.
Q. When he told you that he wanted to borrow this money what did you do?
A. I do not recollect now; I made some movement to get the loan, but exactly how I did I do not know.
Q. Do you remember from whom you got it?
A. From Mr. Jenison.
454 Q. State how you became acquainted with Mr. Jenison.
A. I could not tell you. I had known him a number of years before this transaction. My brother was a clerk in the office where he was. I knew him through my brother. When I got acquainted with him I do not remember. My brother has been dead fourteen years.
Q. Do you not remember that Pryor had borrowed the sum of $500 through B. H. Warner & Co., and that Mr. Jenison was the holder of the note?
A. I know it now. I do not know whether I knew it then or not. I knew it before the transaction was completed, though, because I made the release.
Q. You made the release of what?
A. Of the Warner trust.
Q. Of the B. H. Warner trust?
A. Yes, sir.
Q. That was before, you say, the other transaction was completed?
A. No, sir; it was simultaneous.
Q. Did not Mr. Jenison put the matter of the collection of this $500 in your hands?
A. No, sir; the note itself shows that I had nothing to do with it, and I have offered the note in evidence heretofore.
Q. Now, then, you say you got the money from Mr. Jenison?

A. The note was made payable to him, and whatever difference there was—I might say I got it from him. It was not paid to me like a loan is ordinarily paid. I know of necessity it could not
455 have been. I have no recollection of the exact circumstances, but I know it could not have been, because he held the original loan and he would not pay me money to pay it back to him immediately; but exactly how it was done I have no recollection. I know his loan was paid off, he took the new note, and he was satisfied.

Q. What was the object of making a change in the deed of trust when the trust already secured Mr. Jenison in the sum of $450—that is, the Warner trust, we will call it?

A. I have no recollection as for the reason for it.

Q. Would not that old trust have secured Mr. Jenison just as well as making a new trust?

A. I suppose it would have.

Q. Was it not because you wanted to be trustee and get the commissions and make a charge for drawing the papers, etc.?

A. That is quite an object, as every broker wants to make everything he can.

Q. That was the reason for it?

A. I cannot say. I do not know the reason. That may have been one of the reasons, as it would have been very natural.

Q. Well, now, you consummated the transaction and you say you released the old trust?

A. Yes.

Q. Did you collect the interest on that note for Mr. Jenison?

WITNESS: Which note do you allude to?

Mr. MACKEY: The last note.

WITNESS: The $450 note?

Mr. MACKEY: Yes.

456 A. I do not think any interest was paid on it.

Q. Did not Mr. Jenison employ you as his agent to look after that whole matter?

A. Oh, no, sir. Mr. Jenison is a man who has had more to do with notes than I ever had in my life.

Q. Did he not in this particular transaction employ you to collect the interest?

A. No, sir; I think the note was put in bank. People do not usually employ me to collect interest on notes.

Q. Did you not speak to Thomas Pryor about the interest on his note?

A. I think very likely I did. If the holder of a note writes to me about the non-payment of the interest I generally see or write to the other party.

Q. Well, this trust was made on the 2nd day of May, 1880, to secure the note of Mary C. Pryor and husband for $450, payable in one year from the same date, with interest at 8 %, payable quarterly. Do you know what was done when the note became due?

A. The property was sold.

Q. You mean the trust was foreclosed?

A. Yes.

Q. At the request of whom?

A. Of the holder of the note, Mr. Jenison.

Q. Did you make any demand on the Pryors to pay that note?

A. I had seen Pryor a number of times. He had been up to my office; before it fell due he came to me and told me that he could not pay it, and he wanted me to see if I could not get a pur-
457 chaser for the lot, which I did, and the deed was made. I am alluding to the deed to Martha McIntire wherein she agreed to pay the incumbrances. Afterwards she declined to take it because she found that the taxes were more than had been calculated upon.

Q. Did you not regard that property as good security for $450?

A. It was nothing to brag of at that time.

Q. Was it not good security for the $450 loan?

A. I have just answered that it was not anything to brag of. It was not good security.

Q. You recommended it to Mr. Jenison?

A. Mr. Jenison had it before I had anything to do with it.

Q. You renewed it once before?

A. No.

Q. Was there not a $450 trust on it when you made this new trust?

A. Five-hundred-dollar trust, so far as I know. I never renewed that. I made a new loan.

Q. A new loan of $450 and Pryor paying the difference?

A. I do not know whether he did or not.

Q. At all events, you made a loan of $450 on the property; was it not just as good security a year afterwards for $450 as it was then?

A. It might not have been. I cannot say positively.

Q. I ask you, in your judgment as a real-estate man, whether it was as good security one year afterwards as it was when you made the loan.

A. I could not answer that question, because property that
458 is good security one year might not be good security the next year. I cannot recollect the state of the money market in the years you speak of. I do not think it was.

Q. Do you not think that you could have made a new loan of $450 for Mr. Pryor on that property?

A. I am not certain whether I could or not.

Q. You never suggested that to him?

WITNESS: Never suggested which?

Mr. MACKEY: That he should make a new loan.

A. I had no reason to suggest that. I never did.

Q. So you just went ahead and foreclosed the property?

A. You are talking about the time when the property was sold. I thought you alluded to the time when Mr. Jenison made the loan.

Q. No; I am speaking of the time when the Jenison trust, in which you were trustee, became due.

A. Oh, I did not understand you; that is the reason I spoke as I

did in reference to your question. I did not suggest that to him because he could not pay the money; he had no money.

Q. Was not the property as good security then for the loan as it was when you originally made it, the year before?

A. Possibly it was.

Q. Why did you want to foreclose the old man and sell him out, "bag and baggage," when you could, by negotiating a new loan for him, have saved his property for him?

A. I could not negotiate a loan without his paying the difference, and he had not a penny to do it.

Q. You could not have negotiated a loan for him to save
459 that property?

A. No.

Q. Did not the property sell at that very sale for over seven hundred dollars?

A. It sold for thirty-one cents a foot.

Q. Well, that was nearly eight hundred dollars.

A. Yes, sir; but that would not be much security; a vacant lot would not be sufficient security for that proportion.

Q. Was it not paying rent?

A. No.

Q. Was it a vacant lot?

A. It was a vacant lot, which had been used as a wood and coal yard, with a one-story shed, hardly a building, not fit to rent.

Q. Did it not rent for six dollars a month?

A. Five dollars a month.

Q. That was enough interest on one thousand dollars a year.

A. It might not have paid that for a year when some one was using it as a wood and coal yard. The sale was made with the full knowledge and consent of Mr. Pryor. He made no objection to it. Pryor consented to the sale under the trust, hoping that a difference might be obtained and he receive the difference.

Q. Were you present at the sale?

A. I was.

Q. Who was present besides you at that sale?

A. The auctioneer.

Q. Well, who else?

460 A. I have no recollection of any other persons. I remember that there was quite a crowd, but I do not remember the people. Nothing particular occurred to impress the fact of any particular person being there. I have attended so many sales and this was so long ago.

Q. Well, now, you say in your testimony-in-chief that you bid the property in for thirty-one cents per square foot?

A. I bid it in for Mr. Jenison at his written request.

Q. At thirty-one cents per square foot made the property come to $806, did it not?

A. If you have calculated it. I do not remember now.

Q. But before going any further into that sale I should have taken up the question of the deed made by the Pryors, as you allege, to Martha McIntire. Now, you say that before the Jenison

note became due Mr. Pryor saw you and agreed to sell you his property for $5, subject to the trust upon it, and that you agreed to sell it to any purchaser that you could find for five dollars, subject to the trust upon it?

A. He asked me whether I could get him a purchaser for his property at a nominal consideration, the purchaser to assume the incumbrance, and to give him a lease of the property under rent for one year, so that he could carry on his wood and coal business. I am not certain whether it was before the note became due, but it was before the sale.

Q. In other words, he was ready to surrender the property to anybody who would let him stay there upon payment of rent for the property. Is that the idea?

A. Yes, sir; he did not consider the property worth more
461 than the loan.

Q. Was that his suggestion or yours?

A. His own suggestion.

Q. Did you see anybody about that matter?

A. Yes.

Q. Whom did you see?

A. I saw my uncle. He was in my office, and I submitted the matter to him.

Q. Your uncle who?

A. David McIntire.

Q. What did he say?

A. He thought he would like to take it. I prepared a deed for him, and then afterwards he withdrew from that for some reason—I do not know what his reason was, I have forgotten now—and then I sold it to my sister, Martha McIntire, who agreed to take it, and the deed was altered from "David" to "Martha" McIntire.

Q. Was that before or after the Pryors had signed the deed?

A. Oh, it was before they had signed the deed.

Q. What was the necessity, then, of making those neat erasures in this deed of the 3rd of May, 1881? Could you not have made a new deed, it not having been signed?

A. Yes, sir; I could have done that.

Q. Was there any such great amount of writing to render it too laborious to make a new deed?

A. I suppose I did not feel like writing another deed. It was easier than to write a new deed.

Q. You thought it was easier to make these neat erasures than to write a new deed?

462 A. Well, I do not think the erasures were very neat. I do not agree with you in that. The erasures, however, I made. I thought it easier to make those erasures than to make a new deed.

Q. Did you not, as a lawyer, know that a deed filled with erasures and changes such as this was a paper which might thereafter be questioned?

A. I suppose I would have known it if I had thought of it, but I think I made the note prior to the witnessing of it. I am not certain, but I think I did.

Q. You made a note, you say, at the bottom that the word "Martha," on the sixth line, was written over an erasure. Did you not, as a lawyer, know that it was not a very professional thing to do without stating what the erasure was?

A. I have seen such a note as that a thousand times and never saw one stating what the erasure was.

Q. So you think it was all right to make such a deed as this and take it to the Pryors to sign?

A. The Pryors came to my office. I never went to them to sign anything.

Q. Well, the Pryors came to your office to sign it, you say?

A. Yes.

Q. Why did your uncle David refuse to take that property?

A. I cannot remember his reason now.

Q. Well, he had nothing to pay for it, had he?

A. He might not have wanted to assume the incumbrance. I think likely that is one of his reasons.

Q. Did your uncle David ever buy any property in this city?

463 A. Yes.

Q. I mean real estate.

A. Yes.

Q. Well, then, you saw your sister Martha?

A. I corresponded with her. I do not think I saw her in person.

Q. You corresponded with her about it?

A. Yes.

Q. And gave her, of course, all the information in regard to it?

A. Very naturally I should.

Q. Did she reply to you?

A. She must have done so or I would not have written the deed.

Q. Have you the letter she wrote to you in reply?

A. No, sir; I never keep such correspondence as that.

Q. Well, you made the deed to her then?

A. Yes.

Q. You made this lease (Exhibit A. H. No. 16 in this case), then, to the Pryors of this property the day after the deed was executed by them, you say?

A. Yes.

Q. What was in there after the words "Edwin A. McIntire," the word "agent" being evidently written over an erasure?

A. I think this is one of the agreements printed at one time for me where they put in the word "company" by mistake, and I scratched it out.

Q. How could the word "company" have been in there when it is not on the back?

464 A. Well, it was a misprint—a typographical error. There was quite a number of them printed for me with the word "company" in them. I think that was one of them, but I am not certain.

Q. You never had the word "company" in your firm?

A. No, sir.

Q. Well, the lease was made in behalf of your sister, Martha McIntire, you say?

A. It was.

Q. On the 4th day of May, 1881, one day after the date of the deed?

A. Yes.

Q. Now, when did your sister, Martha McIntire, find out or declare that she would not take the property?

A. I cannot say what date. It was not long after that lease was made.

Q. How long?

A. Between that and the time of the sale.

Q. Well, the sale was made on the 17th of June, 1881, about five weeks afterwards. You say that she found that out before that?

A. Yes, sir; within that time.

Q. And then threw up the property, you say, and had nothing more to — with it?

A. Yes.

Q. And when she threw up the property you then went on with the foreclosure sale?

A. I went then and notified Mr. Jenison. I had told him
465 in the meantime that the property was sold. I do not know that I told him who the purchaser was, and that the new purchaser would pay the indebtedness, and when she declined to take the property I notified him of the fact.

Q. Then a sale was made, and on the 28th day of June, 1881, you made your deed to Mr. Jenison. Now, you say that when you came to settle with Mr. Jenison you told him that the amount of back taxes on the property and other items would require some cash from him?

A. I showed him a memorandum of the expenses of the sale.

Q. The memorandum that you have on the back of this deed which is filed as Exhibit A. H. No. 4 in this case?.

A. Something similar to that. I do not know whether it was that or not.

Q. I wish to go back for a minute. When you took this deed from Pryor and wife to your sister, Martha McIntire, why did you not record it?

A. I gave it to her. I do not know why she did not record it.

Q. Do you mean to say that you gave to her that deed?

A. Yes, sir.

Q. You sent it to her at Philadelphia?

A. I think she came on here to see in reference to it. I will not state positively, but I think that was the case. She was back and forth between here and Philadelphia often.

Q. You say that you gave the deed to her, and you do not know why she did not record it?

A. No, sir; I have no recollection of it particularly.

466 Q. Were you not acting as agent for her?

A. Yes.

Q. Would you give your sister the deed for her to record? Would you not record it yourself?

A. No, sir; I would let her record it for herself. She knows where the record office is as well as I do, both here and in Philadelphia.

Q. Was she here when this deed was executed?

A. I could not say. To the best of my recollection, she was here immediately afterwards.

Q. Was she here on a visit or living here at that time?

A. She was not living here permanently then, but going back and forth. My brother and I were both keeping house and she visited us frequently.

Q. So that is your explanation of why the deed was not recorded; that you gave it to her and do not know why it was not recorded?

A. Yes.

Q. I want to go back to this deed filed as Exhibit A. H. No. 4 in this case. You say you showed this account written on the back of this deed or a similar one to Mr. Jenison and told him that it would require some money in order to close up this transaction?

A. I do not know that I told him that. I told him something similar to that.

Q. You say that he refused to pay any money out of his pocket, but authorized you to borrow as much as you thought necessary?

467 A. Yes.

Q. And thereupon you borrowed the sum of $450 from Emma Taylor?

A. Whatever that other trust was for. I forget the amount now.

Q. That was the amount of the other trust, was it not?

A. Something like that.

Q. Let us get it. Here it is. $425, is it not?

A. Yes, sir; something like that.

Q. Where was Emma Taylor then?

WITNESS: When?

Mr. MACKEY: When, as you say, you borrowed the money from Emma Taylor.

A. She was in my office from time to time. I do not know where she was at that particular moment, if that is what you mean.

Q. She was coming into your office from time to time?

A. Yes.

Q. Where was she living?

A. I have no recollection of her exact residence. She got her meals in an F-street restaurant.

Q. Did you ever address her a note in this city?

A. No, sir; I do not think so.

Q. You had a great many transactions with Emma Taylor?

A. No, sir; not so very many.

Q. Well, a number of them?

A. You seem to have found a number. I do not think I

468 had any more transactions than that; a few. I think there were seven or eight transactions I had with her.

Q. Seven or eight transactions in which deeds passed between you?

A. I have to count them up to say whether that is so or not.

Q. Well, more or less?

A. Yes.

Q. You had the transaction set forth in this record with her?

A. Yes; certainly.

Q. And you collected rents for her, did you not?

A. I do not remember collecting any rents for her. I might have done so.

Q. Have you any recollection of ever paying her any rents?

A. I recollect paying her money, but I forget what the money was for, whether for rents or not.

Q. Have you any recollection of having written to her at any time?

A. Yes.

Q. In this city?

A. I do not remember in this city. I might have done so, but I do not recollect now. If I did I directed it to the general delivery.

Q. You wrote to her, however, when she was out of the city?

A. I have sometimes.

Q. Well, where was she when you wrote to her?

A. I wrote to her two or three times in Philadelphia.

Q. To what address in Philadelphia?

469 A. Once I remember writing her to a place on Summer street near 15th street.

Q. Well, Summer street is a long street.

A. No; it is a short street.

Q. Well, it has many houses on it?

A. No; you do not know what you are talking about.

Q. Well, it has more than one house?

A. It has a few houses on it. I do not remember the number.

Q. Well, where else did you write to her?

A. I wrote once to Chicago and I wrote once to Pittsburgh.

Q. That letter you wrote to Chicago and the letter you wrote to Pittsburgh were written after the suit was brought against you by Mr. William E. McIntire?

A. Yes, sir.

Q. So that it was not about any business of hers that you wrote to her either at Chicago or at Pittsburgh?

A. Well, it might have been about her business and mine.

Q. It was to find out where she was?

A. Yes.

Q. You just wrote generally without sending to any particular house?

A. Yes.

Q. You did not know whether she was there or not?

A. Only what John Taylor told me.

Q. I am speaking now of the time when you were having business transactions with her commencing with this transaction.

A. I never wrote many letters to her.

Q. Did you write more than three?

470 A. I did not say three. If I did, I did not mean that.

Q. Do you remember ever having written her a letter on business connected with any of these real-estate transactions here?

A. I remember writing, but I do not remember the subject of the correspondence.

Q. The only letter now that you have specified as having written to her is the letter written to her at Summer street, in Philadelphia. Do you remember having written to her on any other occasion?

A. I remember to have written to her.

Q. To what place?

A. In Philadelphia, I said.

Q. Connected with any of these transactions?

A. I am not positive, I said when you asked me that before.

Q. Do you remember when the letter written to Summer street was written?

A. I know it was a number of years ago, but I cannot say what time.

Q. Oh, I know it was a number of years ago, but what time?

A. It is impossible for me to tell any nearer than that.

Q. Was it prior to June 18th?

A. I do not recollect the dates exactly. It was a number of years ago, and I did not keep any memorandum of them.

Q. As far back as that?

A. I told you that I could not recollect.

Q. You cannot recollect whether it was three or ten years ago?

A. I know that it was a number of years ago. I said
471 awhile ago that it was ten or twelve years ago, but you did not seem to like that answer.

Q. Ten or twelve years ago you wrote to her, then?

A. Yes.

Q. Did she ever write to you?

A. Yes.

Q. How often?

A. Not very often.

Q. Have you any of her letters?

A. Not in regard to this property.

Q. Have you any of her letters in regard to any other property?

A. I may have.

Q. Have you searched for the letters in regard to other properties?

A. Only in regard to these properties. I do not think it is any of your business about the other properties.

Q. Do you object to looking for the other letters?

A. I object to employing the time for you. I would have to employ a clerk.

Q. Perhaps you may do it to oblige yourself before we get through. I would like you to state definitely whether you will look for and produce, if found, at the next session any letters which you have from Emma Taylor.

A. Well, I do not think I would be required to produce any except those pertaining to this property.

Q. I do not ask for your opinion. Will you give a categorical answer, yes or no?

472 A. I have given you my answer in the only way that I am going to, unless Gen. Henkle directs me otherwise.

Mr. HENKLE: I do not direct him to do it.

Mr. MACKEY: Do you object to him doing it?

Mr. HENKLE: He can use his own pleasure about it.

Q. Your counsel says that you may use your own pleasure about it. What is your pleasure?

A. I answer the same as I did before.

Q. Is that the only answer you have to give?

A. Yes; it is a matter of considerable expense to look over papers which have been mixed up in the recent removal of my office.

Q. Well, you looked for letters from her in respect of this transaction, did you not?

A. Yes.

Q. And you found none?

A. No, sir.

Q. Did you not find others which had no relation to this transaction?

A. No, sir.

Q. What sort of search did you make in looking for those letters?

A. I looked through my safe which contained valuable papers, such as I consider valuable, and ordinary letters outside of my safe I did not look for at all.

Q. Are those other letters accessible?

A. Yes, sir; but they have been mixed up so ever since I
473 removed my office that it would take considerable time to look over them, and they are not indexed at all.

Q. I understand you, then, to say that you have not a scrap of paper containing Emma Taylor's handwriting which you have been able to lay your hands upon, other than these you have already produced?

A. No, sir; I do not say that. I think I have produced all that you ought to see.

Q. Have you any papers having Emma Taylor's handwriting on other than the papers which you have produced?

A. I have no recollection now.

Q. In making this search for these deeds did you come across any papers having her handwriting?

A. I am not positive whether I did or not, and that is the reason that I answered as I did before. All papers which I thought concerned these papers I produced.

Q. You decline, as I understand you to say, to make any search to ascertain whether you have any other papers containing her handwriting or not?

A. No, sir; I did not say that at all. I say that it is a matter of

considerable expense for me to hunt up all the old papers which have accumulated in a business of twenty or thirty years' standing and which are not indexed and have been separated in the removal of my office, and I think if they were of any value I would have put them with my deeds in my safe.

Q. You were dealing with Emma Taylor for four or five years?

A. Yes, sir; but her letters did not amount to anything that I remember, and I would not naturally have saved them.

474 Q. You paid her a great deal of money from time to time?

A. Not a great deal; some money. Every piece of property she had was old, broken-down property, occupied by colored people.

Q. In the case of this loan of hers to Mr. Jenison she gave you four hundred and fifty dollars, did she not?

A. Yes, sir; $425, I think it was.

Q. Did she pay you that by cash or in check?

A. I have no distinct recollection about that.

Q. Have you any recollection, distinct or otherwise?

WITNESS: About that?

Mr. MACKEY: Yes; how it was paid to you.

A. I remember it was paid.

Q. How was it paid?

A. I said that I had no distinct recollection about that.

Q. I asked you whether you had a recollection, distinct or otherwise, about it.

A. I know that she paid me, but I have no distinct recollection how it was paid. I do not know what you mean by "otherwise."

Q. Mr. Jenison gave her a note, did he not?

A. He passed a note—yes, sir; for the amount.

Q. When that note was taken up it was taken up by you, was it not?

A. No, sir.

Q. That $425 note?

A. No, sir.

475 Q. Well, taken up by your sister, Martha McIntire—that is, by you for your sister, Martha McIntire?

WITNESS: The $425 note?

Mr. MACKEY: Yes.

A. No, sir.

Q. Did you not buy subsequently this property from Emma Taylor for your sister, Martha McIntire?

A. Yes, sir; but the note was given up before that time—somewhile before that.

Q. Who paid the note?

A. It was surrendered to Mr. Jenison in consideration of the deed being made to Emma Taylor.

Q. Did you not get the note from Emma Taylor?

A. I do not know whether I got it or whether she gave it to him.

Q. You say that Emma Taylor gave it to him.

A. I have no recollection as to who actually handed it to him.

Q. Mr. Jenison has testified that he never saw Emma Taylor in his life.

A. Well, he thinks he never has, but he may be mistaken about that.

Q. You think he has seen her?

A. I do not know whether he has or not. I do not say that he has.

Q. So you do not know, then, what became of the $425 note?

476 A. Yes. I know it was surrendered to Mr. Jenison. He admitted that he received it.

Q. Did you surrender it to him?

A. Well, it was either surrendered by me or in his presence——

Mr. MACKEY (interposing): I do not want you to argue it.

WITNESS: Generally, you want me to guess.

Q. I want you to testify whether you remember surrendering that note to him or not.

A. I do not remember whether I surrendered it to him or whether Emma Taylor did; that is something I stated long ago.

Q. Was Emma Taylor living in this city at the time that note was surrendered?

A. She was in the city, but whether she was residing here permanently I could not say.

Q. Well, you got the $425 from Emma Taylor, and what did you do with it?

A. The amount gotten from her paid the expenses of the property.

Q. Well, you paid, as noted down here on this deed of trust (Exhibit A. H. No. 4 in this case), taxes, $278.81; trustee's commissions, $40.30; to the auctioneer, $23.12, and for advertising, $24.46, amounting to $366.69. I suppose you charged Mr. Jenison a commission for getting that $425 for him?

A. Yes, sir; very naturally so.

Q. What was your rate of commission at that date?

A. From three to five per cent.

Q. You think you charged him five per cent. for that amount?

477 A. I do not remember what I charged him at all.

Q. You did not charge him more than $21.25 for getting that amount, which would be five per cent.?

A. I do not know what I charged him; you have the figures before you.

Q. The figures for making that $425 loan from Emma Taylor was not put upon this paper at all. This paper contains only the items of expenses in relation to the Pryor property, does it not?

A. It is on one of the papers there, then.

Q. No. If there is I would be glad if you would show it to me. Was there any other expense in relation to getting that $425 loan?

A. I do not know. Let me look at that. I cannot tell you that way. This memorandum (Exhibit A. H. No. 4 in this case) shows expenses of the sale amounting to $376.69. It is a rough memoran-

dum there, showing one way of calculating the amount at $449.61, and some of that was struck off.

Q. You are alluding to this lead-pencil memorandum on the back of the deed?

A. Yes, sir; showing the maximum charges to be $449.61.

Q. You say some of that was struck off?

A. Yes, sir, and that made the loan $425.

Q. Do you know of any other charges than those that you have put here—for taxes, $278.81; trustee's commission, $40.30; auctioneer, $23.12, and advertising in Critic, $24.46, making $366.69?

A. Yes; I do.

478 Q. What other items of charge were there?

A. The maximum charges are marked in pencil on the same paper you are looking at.

Q. This is what you charged him with?

A. No; that is a memorandum of the maximum amount of charges which could be made, showing $441.69, and we just took that and made it in round numbers $425. I deducted other fees. I was entitled to the difference.

Q. Well, I see now that you made in this lead-pencil memorandum, first, a bill of three hundred and sixty-six dollars and sixty-nine cents as the charges upon the property necessary to be paid by Mr. Jenison. Then, underneath, you have charged for trustee's deed and acknowledgement of the same, $10, making $376.69. Then you have added a little note in pencil here, "Jenison says he cannot pay any of the above and wants to make a new loan;" and then the next thing is expenses above $376.69; recording trustee's deed, $1.50. What trustee's deed was that?

A. The deed mentioned above, I suppose. You just read about a trustee's deed there.

Q. You mean the trustee's deed from Edwin A. McIntire to Mr. Jenison?

A. I guess it must be, because there is a charge above there for trustee's deed.

Q. Then the next item is new deed of trust, acknowledgment, and recording, $8.50. That was the Emma Taylor deed of trust, was it not?

A. I presume so. I have no definite recollection of that; it has been so long since I made that memorandum.

479 Q. Then there is a charge for release from Warner to Pryor and recording and acknowledging the same, $5. That release was of the $500 trust which Pryor had put upon the property through Mr. Warner, was it not?

A. I presume it was.

Q. You have a charge in here of $50 for an abstract. What abstract was that?

A. As I said before, that is a pencil memorandum showing the maximum amount of charges which could be made. That was shown to Mr. Jenison when he wanted to know what the expenses were, and after stating it was that amount I agreed to fix the matter for $425.

Q. That is, you knocked off $16?
A. Knocked off the difference, whatever that was. You have the papers there before you.
Q. Well, did you undertake to pay all these items here for him and to furnish him with this abstract for the $425?
A. Yes, sir.
Q. Did you furnish him with the abstract?
A. Yes, sir.
Q. Who made the abstract?
A. Fred. Jones made part of it and I made the rest of it myself.
Q. Did you get the Warner and Pryor trust released?
A. Yes, sir.
Q. Did you record the trust deed?
A. Yes; I think so. I am not certain about that.
Q. Did you not say in your direct examination that there
480 was not enough money to record the trust deed and therefore you did not record it?
A. Yes, sir.
Q. Is that so now? Do you say that now?
A. Possibly there was not enough. You have the figures there before you showing whether there was or not.
Q. You have just stated that you have deducted this amount.
A. No, sir; I said that I was not certain about that.
Q. Well, now, I would like you, Mr. McIntire, to state whether or not this loan of $425 was sufficient to cover all the expenses of that transaction.
A. No, sir; it was not.
Q. Did you not say a moment ago that you agreed that that amount should be sufficient?
A. Yes, sir.
Q. And therefore, when you found that it fell short $1.50, you refused to record your deed to Mr. Jenison?
A. No, sir; it fell short more than that.
Q. What more of it fell short?
A. It fell short in the matter of the abstract. I had to pay for that more than I anticipated.
Q. Did you say that you paid more than $50 for the abstract?
A. I do not remember what I paid, but it was more than I anticipated paying.
Q. Did you deliver the abstracts to Mr. Jenison?
A. No, sir; I do not think I would give them to him, naturally.
Q. Whom would you give them to?
481 A. To the holder of the note.
Q. To Emma Taylor, did you?
A. Yes, sir.
Q. So that it was Emma Taylor who received the abstract?
A. Naturally so; but I have no recollection of giving it to her.

Mr. HENKLE: I would like to know what this has to do with the issues in this case.
Mr. MACKEY: It may be that you are not able to see.

Mr. HENKLE: I do not see that it has, and I shall stop it very soon, unless I do see, and ask the court to expunge it from the record.

Q. You acted as Emma Taylor's agent in making that loan, did you not?

A. Not necessarily so. I acted as agent for both of them. The borrower always, or nearly always, pays the commission and expenses.

Q. And Emma Taylor desired the abstract, and you insisted on her having it?

A. I never made a loan in my life without an abstract was made.

Q. Did not you make the loan for Mr. Jenison to Pryor without making an abstract?

A. I do not recollect now whether he wanted an abstract. Possibly he had one satisfactory to him.

Q. You do not know whether he had an abstract, then, or not?

A. No, sir.

482 Q. And when the Emma Taylor loan was made, then you wanted an abstract?

A. Of course. If Mr. Jenison left it with me to decide I should have said, Get an abstract. He might have said to me that he had an abstract, and if he had said so I would not have gotten it. You asked me to guess at it.

Mr. MACKEY: I do not want you to guess at it. I just want to know your recollection about it and wish you to answer yes or no.

Q. Having insisted on Emma Taylor being protected by having the title to the property searched and charging $50 for it, why did you not put upon record your deed to Mr. Jenison in order to complete Emma Taylor's title?

A. In the first place, I did not charge $50 for it and you have no record of my charging $50 for it; and, in the second place, when I make a loan I transfer the papers to the parties having the loan.

Q. Did you transfer this deed to Emma Taylor?

A. The deed of trust—certainly.

Q. No; the deed which you made to Mr. Jenison.

A. No, sir; I have no recollection of it. I should naturally have handed it to him to be recorded.

Q. You did not hand it to him?

A. I think I did.

Q. Have you not testified that you refused to record it because Mr. Jenison would not pay the money necessary for the recording of it?

A. Yes, sir.

483 Q. And is it not a fact that later on you did record the deed?

A. Yes, sir; that does not alter the fact that I handed it to him.

Q. And then he handed it back to you?

A. Yes, sir. He testified to that.

Q. All this time, you having handed this deed to Mr. Jenison, you

examined the title to the property for the purpose of protecting Emma Taylor, and yet notwithstanding made the loan to Mr. Jenison, when upon the record there was no title in him to the property?

A. You make your question so long. In the first place, I did not say that I examined the title; I said that I assisted in examining some parts of the title; and, in the next place, I may have made an error in trusting too much to a man whom I had known so many years.

Q. Well, after the deed was made by you to Mr. Jenison and not recorded, did you not go on and collect the rents from Pryor of that property?

A. Some of the rents were collected.

Q. Did you not collect $6 a month rent from Thomas Pryor for that property on May 6, 1881?

A. If you have the receipt there in my handwriting let me see it and I will admit it.

Q. I now show it to you.

A. That is not my writing.

Q. Was not that rent, as receipted for on this printed receipt, dated May 6, 1881, for six dollars (being part of Exhibit
484 A. H. No. 1 in this case), collected by you or your agent?

A. I have no recollection of it.

Q. Do you mean to say that the rent receipted for on May 6, 1881, two days after the deed was made to Martha McIntire, was not collected by you or some one for you?

A. I think very likely it was; but you asked me to state positively, and I cannot say.

Q. Do you deny collecting that rent?

A. No, sir.

Q. How about the receipt of July 5, 1881, for six dollars?

A. That receipt is in my handwriting. I do not deny that.

Q. You collected that rent?

A. Yes, sir.

Q. How about the receipt of August 6, 1881, for six dollars? Did your agent collect that rent?

A. That is not in my handwriting.

Q. Do you know in whose handwriting it is?

A. No, sir.

Q. Is it in the handwriting of any clerk of yours?

A. I do not know. You asked me to guess again. It might be and it might not.

Q. Here is one dated September 7, 1881, apparently not in your handwriting. Do you know anything about that?

A. I do not recognize it. It might be all right. I do not say it is wrong, but I do not recognize it.

Q. Here is one dated November 15, 1881, apparently not in your handwriting. Do you know anything about that?

A. I say the same thing; it might be all right, but I do
485 not recognize it.

Q. Here is one dated October 10, 1881. What do you say as to that?

A. Same answer.

Q. Here is another dated December 15, 1881. What do you say as to that?

A. Same answer.

Q. Here is another one dated January 9, 1882. What do you say as to that?

A. Same answer.

Q. Here is another one dated February 15, 1882. What do you say as to that?

A. Same answer.

Q. Here is another one dated March 15, 1882. What do you say as to that?

A. Same answer.

Q. All of these are for six dollars each, are they not?

A. You are looking at them; I am not, particularly.

Q. Here is another one dated April 15, 1882. What do you say as to that?

A. The same answer.

Q. Here is another one dated May 12, 1882. What do you say as to that?

A. Same answer.

Q. Here is another one dated June 15, 1882. What do you say as to that?

A. Same answer.

Q. Here is another one dated July 15, 1882. What do you
486 say as to that?

A. Same answer.

Q. Here is another one dated August 15, 1882. What do you say as to that?

A. Same answer.

Q. Here is one dated March 18, 1883. What do you say as to that?

A. That is in my handwriting.

Q. These are all on your printed forms used then in your office?

A. They are.

Q. Well, down to March 18, 1883, was not Pryor paying you six dollars a month for that property?

A. No, sir.

Q. Do you deny that he paid you six dollars a month rent?

A. He did not pay me six dollars a month rent down to March 18, 1883, at all.

Q. Does not this last receipt show that he paid you six dollars rent on March 18, 1883?

A. That receipt shows on account of rent. It does not show that all these intervening months had been paid, by a long sight. On the contrary, it shows just the opposite.

Q. Well, this was on account of rent, then?

A. Yes, sir.

Q. He had paid, at all events, the amount of rents represented by those receipts?

A. I do not say that.

Q. Do you say that he did not?

487 A. No; I do not say so. I do not identify some of those receipts. They may have been all right or they may not.

Q. Do you deny having received the money represented by those receipts?

A. I did not say that I denied it. I said that I had no knowledge of it.

Q. Have you any reason to suppose that you did not receive the money?

A. No, sir; I have no reason to suppose that I did not.

Q. For whom were you collecting these rents?

A. For the owner of the property.

Q. Who was the owner of the property then?

A. First, my sister for awhile, and then Mr. Jenison for awhile.

Q. Your sister, according to your statement, was the owner for how long?

A. For a little while.

Q. From May 6, 1881?

A. Yes, sir. I do not say that I collected every one of those dates there for her.

Q. And then you collected for Mr. Jenison?

A. Yes.

Q. You collected them, at all events?

A. From the date of the deed to Emma Taylor, and then I collected it for Mr. Jenison.

Q. When you say this money belonged to Mr. Jenison, and that he refused to record the deed, why did you not record the deed with this money?

488 A. That money was used.

Q. Used for what?

A. In repairing the property.

Q. What repairs?

A. I remember distinctly part of the roof being blown off in a high gale, and that was repaired and a new fence put there.

Q. Did you make that report to Mr. Jenison?

A. Certainly.

Q. You say you took this money for that purpose?

A. Yes.

Q. Whom did you employ to make any such repairs as that?

A. Some one that Mr. Pryor himself suggested—one of his friends; some colored man whose name I have forgotten now.

Mr. HENKLE: I object to all this line of examination as irrelevant to the issues in this case.

Q. If Mr. Pryor did not pay you the rent regularly, and he was indebted to rent, you would not have paid him any of this money for repairing of the roof, etc., would you?

A. I did not pay him any money at all.

Q. Did not you say that you used this money for repairing the property, and that you paid Thomas Pryor for making the repairs?

A. I said that it was very likely some one that Mr. Pryor suggested himself. I did not say that I employed him to make the repairs.

(Adjourned.)

489 MARCH 8, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who deposes and says, being recalled for further cross-examination:

Cross-examination.

By Mr. MACKEY:

Q. How much did the repairing of the roof on the Pryor property cost?

A. I do not recollect now.

Q. Have you no account of it at all?

A. No, sir.

Q. You never kept any account of the rents with Mr. Jenison?

A. I reported it to him at the time.

Q. You never had any book account at all about it?

A. No, sir.

Q. Is that the way you keep rent accounts in your office?

A. Some of them I do.

Q. You were a real-estate agent at that time, were you not?

A. I was.

Q. And are still?

A. I am.

Q. And is that the way you keep your accounts with your principals?

490 WITNESS: What way?

Mr. MACKEY: Just in your head.

A. I said some of them I kept that way and some I kept in books.

Q. Why did you not keep Mr. Jenison's account in your books?

A. Because it was such a trifling matter that I did not think it worth while.

Q. It was six dollars a month rent?

A. Yes.

Q. Wherever you have tenants who only pay you $6 a month rent, you consider it so trifling a matter that you do not keep a book account of it?

A. I did not say that.

Q. I ask if that is not the case.

A. No; I do not say that.

Mr. MACKEY: Mr. McIntire, I asked you if that was the case.

WITNESS: What is the case?

Q. Whether when you have rent accounts amounting only to $6 a

month, you consider such accounts so trifling as not to keep them in books?

A. If the rent was only paid for a few months I would not keep it in books.

Q. Did not you have a lease with Pryor of this property?

A. Yes.

Q. You thought it of such importance, did you not, as to have him make a lease of the property over to you?

491 A. No, sir; he wanted it himself. I did not believe that the man would live a month or two, in the first place, and then I did not believe he would carry on business, because he seemed to look to me to supply his place with material, and I could not do that indefinitely. When I say material I mean wood and coal. I furnished him with wood and coal.

Q. That was out of your own pocket?

A. Yes, sir; out of charity.

Q. You did not charge that to Mr. Jenison?

A. No, sir.

Q. You say that you accounted to Mr. Jenison from month to month?

A. No, sir; I did not say that. I say what amount I received I accounted to Mr. Jenison.

Q. But you kept no book account of it at all?

A. Not to my recollection.

Q. After Pryor left—by the way, do you know when Pryor did leave?

A. No, sir.

Q. After he left, who rented the property?

A. I have no recollection of anybody at all.

Q. Did you not send a note to Mrs. Pryor telling her to turn over the key to somebody?

A. Mr. Pryor returned the keys to me himself. I had no necessity to send to her.

Q. Did you rent to anybody after Pryor left?

A. I have no recollection of doing so.

Q. Do you say positively that you did not?

A. I say I have no recollection. You ask me to guess again.

492 Q. Mr. Pryor stayed there up to his death?

A. No, sir; he left some time before his death, because he brought the keys up to me.

Q. What was done with the property after he brought the keys to you?

A. My recollection is that it just remained as a vacant lot.

Q. You did not rent to any one?

A. I have no recollection of doing so.

Q. Who paid the taxes on the property up to 1884?

A. When I made the settlement at the time of the deed to Mr. Jenison it was calculated for then. As to the taxes after that, I could not answer positively. Some I paid myself as trustee or agent for my sister, Martha McIntire.

Q. That is to say, when you put the deed on record that you had

made to Mr. Jenison, which record was April 21, 1882, you then kept the accounts of the property in the name of your sister, Martha McIntire?

A. I have no recollection of the date you mention. I have kept the accounts in the name of my sister, Martha McIntire, since the time the deed was made to her. I do not think it was 1882.

Q. In whose name did you keep them before that?

A. My recollection is that there were no accounts to keep.

Q. Were not taxes to be paid on the property?

A. I told you awhile ago that I paid the taxes at the time I made the deed to Mr. Jenison, or about that time; it might not have been exactly that time.

Q. The time you made the deed to Mr. Jenison was June
493 28, 1881?

A. While ago you said 1882.

Q. No; I said that was the date of the record of the deed. You did not record it until April, 1882.

A. Well, I made an account to him. What I mean to say is that I made an accounting to him at the time that deed was made and agreed to pay the taxes; I paid the taxes, but whether I paid them immediately then or found it an advantage to delay for awhile paying them I do not remember. Sometimes in paying those special taxes, where there is a considerable amount of them, there is an advantage in delaying the payment, and there might have been at that time such an advantage.

Q. That is, your agreement with Mr. Jenison was to pay all the taxes that accrued up to the date of the deed made by you to him?

A. I presume that is the case, though I do not know positively.

Q. You did not agree to pay the taxes which accrued after making the deed to Mr. Jenison?

A. Very natural, although I have no recollection of it.

Q. Between the date when you made the deed to Mr. Jenison and the date when your sister, Martha McIntire, got the title, who paid the taxes on the property which had accrued between those dates?

A. I do not know.

Q. Were there any repairs to be made upon the property?

WITNESS: When?

494 Mr. MACKEY: In that interval.

A. I have no recollection of anything happening in that interval.

Q. You have testified that there was only a lot and a one-story shanty there, used as a wood and coal office. Do you remember the size of that shanty—that is, its width?

A. I can only guess.

Q. Well, guess. Was it about six by eighteen feet or something like that?

A. About 20 x 18 feet; perhaps it was larger than that.

Q. So, then, it was something of a shanty after all—that is, it was not such a little shanty?

A. No, sir; it was only a shanty.

Q. Were there any more repairs to be made on that shanty?

A. Oh, yes, sir. There were little repairs that ought to have been made if they intended to keep it as a shanty forever.

Q. Were any repairs made on that shanty between the interval of your making the deed to Mr. Jenison and the time of your sister, Martha McIntire, getting the title?

A. I told you I had no recollection of that interval.

Q. Between the date of your making the deed to Mr. Jenison and the date of the deed to your sister, Martha McIntire?

A. I told you that I had no recollection of what was done during that interval.

Q. You say that you have no recollection whether the property was occupied at that time or not?

A. No, sir; no distinct recollection about it.

495 Q. No recollection of having collected any rents during that interval?

A. No, sir; it was not a long interval, though, but it happened a number of years ago.

Q. Who negotiated the sale between Emma Taylor and your sister of the Pryor property?

A. In all her real-estate negotiations I have been her agent.

Q. And you were in this particular one?

A. Certainly.

Q. Who proposed the sale of it—did it come from Emma Taylor first or from you?

A. It came from her first.

Q. Did it come verbally?

A. Yes, sir. She called at my office and asked me if I could find a purchaser for the properties, as she wished to use some money at once and would sell cheap.

Q. What did she sell it for?

A. Twenty-five hundred dollars for the Pryor property and the property number 2112 I street.

Q. The Southey property?

A. Yes, sir.

Q. Twenty-five hundred dollars for the two pieces?

A. Yes, sir.

Q. Was any price put upon one and so much for the other?

A. I have no recollection of that.

Q. It was just lumped in that way?

A. There might have been something said about the separate values, but I have no recollection of it now.

496 Q. How was that twenty-five hundred dollars paid to Emma Taylor?

A. I could not say that positively.

Q. You cannot say whether it was paid to her by your check or in cash?

A. No, sir; I cannot say positively.

Q. If you paid it to her in cash you would have taken a receipt for it, would you not?

A. No, sir; the deed would be a receipt.

Q. And if you paid her a check your check book would show that, would it not?

A. It would show that I paid a check to her; it would not show what for.

Q. Have you any check book or any stub book showing payments to her?

A. No, sir; I cannot find any just now.

Q. And you do not recollect the fact of making such payment by check?

A. No, sir.

Q. And you do not recollect the fact of making the payment in cash?

A. I recollect that the payment was made.

Q. But you cannot say whether it was made in cash or by check?

A. No, sir; I cannot recollect in regard to any particular transaction unless there be something to call my attention to it.

497 Q. How can you say that payment was made to her, when you cannot say whether it was in cash or by check?

A. Just as I can say positively about what I bought for myself or anybody else.

Q. Emma Taylor conveyed the Pryor property and the Southey property to your sister, Martha McIntire, you say, for twenty-five hundred dollars; that deed was made on the 31st of May, 1884. Is that the deed, which I now hand you, being filed as Exhibit A. H. No. 14 in this case?

A. This is the deed from Emma Taylor to Martha McIntire.

Q. Why was that deed kept off the record until October 14, 1886?

A. I have no idea at all; it was left in the possession of my sister, Martha McIntire.

Q. You did not keep it yourself?

A. No, sir.

Q. Who recorded it?

A. That I could not say.

WITNESS: You mean, I suppose, who took it to the recorder's office?

Mr. MACKEY: Yes.

WITNESS: I do not remember.

Q. Who got it from the recorder's office?

A. I cannot state.

Q. How did you get it to put in evidence here?

A. From my sister Martha.

498 Q. Did you get all these deeds from your sister Martha of conveyances to her?

A. All that pertained to her property.

Q. So, then, you did not have to search your office for these deeds, but got them from your sister Martha?

A. Yes; I did search my office. Some there she did not have at all.

Q. Now, you have no explanation whatever to give why this deed

was kept off the record from May 31, 1884, until the 14th day of October, 1886?

A. Nothing more than the explanation which she makes herself. It was her doings. She locked it up in the safe deposit company.

Q. You were attending the business of your sister, Martha McIntire, for her?

A. Some of her business. I do not attend to everything for her. She has some sense and can do some things herself.

Q. And you have nothing whatever to show your payment of twenty-five hundred dollars to Emma Taylor as the consideration for these two pieces of property except the acknowledgment of the receipt of the money in this deed?

A. No, sir; I had enough thus far.

Q. Where was Emma Taylor at that time?

A. I told you before that I had no knowledge of her place of residence. I knew where she got her meals.

Q. How did you find out where she got her meals?

A. Because she told me.

Q. But she never told you where she lived?

A. Not to my recollection.

499 Q. Did you ever have any occasion to communicate with her—to summon her to your office about these business matters?

A. I do not recollect any time having that necessity, because she would come in the office every few days as she passed by.

Q. You sold quite a number of pieces of property to Emma Taylor?

A. You seem to think I have.

Q. You purchased on behalf of your sister what the record here shows from Emma Taylor?

A. Yes.

Q. And in none of these transactions did you have occasion to write to Emma Taylor asking her to call at your office?

A. I do not say that. I say I have no recollection of doing so.

Q. Well, did you ever have occasion to do so?

A. I do not remember in these number of years.

Q. Did you ever know where she lived?

A. You ask me the same question over again. If I ever knew where she lived I would answer your question.

Q. Do you mean to say that you did at one time know where she lived, but have forgotten?

A. No; I have no recollection of ever knowing where she lived. I had an idea where she lived, but I was not certain about it. I never called upon her. I do not call upon my clients ordinarily, and in sales of these little properties I would not think worth while to bother myself much about them.

500 Q. You also purchased from her in behalf of your sister, you say, the properties known as the Ackerman property, the Eller property, and the Barbara Brown property, recited in this deed of September 6, 1884, the same year that your sister, you say, bought the Pryor and Southey properties from Emma Taylor.

Do you remember how the purchase-money was paid her for this property; whether in cash or by check?

A. No, sir.

Q. Have you any paper of any sort, any memoranda of any sort, in your office relating to these transactions?

A. Not to my knowledge. There may be some papers there, but I have not found any yet.

Q. How did your sister Martha give you the money to pay for the Pryor and Southey properties; by check or in cash?

A. That I do not recollect.

Q. Have you any memoranda at your office which would show whether she paid you this money in cash or by check?

A. I have not been able so far to find any.

Q. Do you remember now how she gave you the money to pay to Emma Taylor for the properties purchased under this deed of September 6, 1884—the Ackerman property, the Barbara Brown property, and the Eller property?

A. I have made thousands of transactions in real estate, and I do not remember a single transaction as to how the money came to me or how it was paid, unless something particular happened to call my attention to it, and nothing particular in this case happened.

Q. Now, if you paid this money in check, you would have the check?

501 A. I do not say so.

Q. You would not have the check?

A. I might or might not.

Q. You have not?

A. I do not know whether I have or not.

Q. Will you make a search for it?

A. No, sir; it will take me a month to search through my papers for that.

Q. Don't you keep your checks?

A. Yes, sir; but when I moved from I street I could not find my checks. If it were a check of a recent date I would be very glad to look for it.

Q. Do you know how this sale happened to be made by Emma Taylor to your sister Martha of these three properties?

A. I suppose, like anything else, Emma Taylor wanted to sell and Martha McIntire wanted to buy.

Q. Emma Taylor asked you to sell them for her?

A. She asked me to get a purchaser for her.

Q. Did she put any price upon the property?

A. She must have done so.

Q. Did you make any entries upon your books as to the price?

A. I might have done so.

Q. I asked you whether you did or not.

A. I do not know.

Q. Have you any books in which you make entries of property which you have for sale given you by customers?

A. Yes, sir.

Q. Do any of those books show an entry of this property?

502 A. They might or might not; I do not know; I have not looked.

Q. Will you look?

A. If I think of it I will.

Mr. MACKEY: I wish you would look and see if you have upon your books and see if you have any such entry and produce it at the next session.

Q. Do you remember the prices that were put upon these properties?

A. I told you awhile ago that I had no recollection of that.

Q. She wanted a lump sum for these three properties?

A. I do not say that. She wanted to sell them, I said, and my sister Martha was ready to buy.

Q. Did you dicker with her at all about it or give her what she asked?

A. I have no recollection of a conversation which occurred at all.

Q. The deed recites here eighteen hundred dollars as the consideration money for these three properties?

A. I do not think that was all paid to her at that time. I think part of the negotiations for part of the property was before that.

Q. Did you make an abstract of these properties before you purchased from Emma Taylor?

A. There was an abstract of those three properties somewhere.

Q. When were those abstracts made and who made them?

A. I do not know.

503 Q. You have them?

A. They were with the papers. I do not know. I never had a transaction without an abstract.

Q. When you purchased the property you naturally retained the abstract?

A. When I purchased property I obtained one, but do not retain it. I received one from the seller.

Q. You had an abstract when you purchased the property and kept it, did you not?

A. I would naturally give it to the purchaser.

Q. Did you ever give your sister Martha an abstract of title with the deeds?

A. I do not know; I must have done so, but I do not recollect.

Q. And those abstracts showed, of course, a good title in Emma Taylor at the time of the purchase from her of these three properties, did they not?

A. If I could say that I could answer your other question positively. I have no recollection by whom the abstract was made and I cannot tell what was in the abstract.

Q. Would you have recommended to your sister to buy property in which she had no title?

A. No, sir; but, on the other hand, it might not have shown a perfectly good title, but might have shown some defect which could have been cured.

Q. Did you regard any two of these properties you purchased from her as being worth eighteen hundred dollars?

A. No, sir.

Q. You took all three to be worth eighteen hundred dollars?

504 A. Yes, sir; that is the way they were estimated at the time.

Q. That is to say, they averaged six hundred dollars apiece?

A. Yes, sir.

Q. And that your sister was willing to pay to Emma Taylor and did pay her at that time?

A. No, sir. I do not say that. On the contrary, I said -while ago that one of those properties was paid for before, namely, the Brown property, and that the deed was not put on record, owing to the delay on my sister's part, and this deed you hold in your hand—I presume that is the one—let me look at it. (After looking at deed:) This deed was made because I could not find the other one, and it was made embracing all the properties. She had previously settled for the Brown property.

Q. So you did not pay her eighteen hundred dollars at that time?

A. I did not say I did.

Q. You did not pay her eighteen hundred dollars, I asked you.

A. No, sir.

Q. What did your sister pay you at that time?

A. I think it was twelve hundred dollars.

Q. You cannot remember whether it was paid in cash to you to pay to Emma Taylor or paid to you by your sister by check?

A. I have answered that question a dozen times, and I answer it again in the same way, that I cannot remember those particulars in any transaction.

Q. Is this the deed (Exhibit A. H. No. 1 in the Brown case) which you say constituted the previous purchase of the Bar-

505 bara Brown property?

WITNESS: General, Mr. Mackey is going into the Brown case now and not the Pryor case.

Mr. MACKEY: I am questioning him about the existence of Emma Taylor and those deeds for that purpose.

Mr. HENKLE: As it relates to that, Mr. McIntire, you may answer it.

A. This is the deed.

Q. Now, you say that the reason this Barbara Brown property was included in this deed of September 6, 1884——

WITNESS (interposing): Let me look at that deed, please.

Mr. MACKEY: That is the last deed, being Exhibit A. H. No. 2 in the Brown case.

Q. (Continuing:) Was because the previous deed made by Barbara Brown and Emma Taylor and Martha McIntire of the property was not recorded. Is that the reason?

A. I do not think I said that. I said it could not be found for some reason or other; possibly because it was not recorded, but I

have no recollection of that. I say that might have been the reason.

Q. What the true reason was you do not know?

A. Well, it was because it could not be found.

Q. And you could not find it on record?

A. I do not say that at all.

506 Q. Was that deed recorded at that time?

A. I do not know whether it was or not.

Q. Do you not know that you recorded that deed on the 18th of April, 1891.

A. Possibly I did. You have it in your hand, and you can tell whether I did or not.

Q. Will you give me an answer to that question?

A. You have the deed in your hand and can tell when it was recorded.

Q. I ask you whether you recorded that deed in April, 1891.

WITNESS: Let me look at it, please.

A. (After examining deed.) This deed appears to have been recorded on the 7th of April, 1891.

Q. By whom?

A. Either by myself or by my sister, Martha McIntire.

Q. You knew of the fact of that deed being recorded?

A. I know it now.

Q. But at that time you knew it?

WITNESS: At what time?

Mr. MACKEY: At the time that the deed was recorded.

A. Of course.

Q. At whose suggestion was it recorded?

A. At the suggestion of my counsel, Gen. Henkle.

Q. You knew then and know now that this deed was not recorded until 1891?

A. I remembered that two deeds were not recorded until

507 1891, but what they were had slipped my mind. When the deeds were produced and shown to Gen. Henkle he suggested that they had better be recorded. They had been in the possession of my sister Martha for quite a time.

Q. That deed was not on record when you made this deed of September 6, 1884, and you say that was the reason why it was included in this deed of September 6, 1884—that is, because you could not find the deed and it did not appear on record?

A. No, sir; I did not say that.

Q. Will you give us the reason?

A. I say because the deed could not be found and, perhaps, because the deed was not recorded. I say now that the deed was not recorded at that time.

Q. So, as a matter of safety, you put it in this deed of September 6, 1884. Is that correct?

A. Yes, sir.

Q. Will you tell me why you did not record that last deed until April, 1891?

A. I did not record either one of them. To the best of my recol-

lection, both of them were taken by my sister, and I presumed that the deed had been recorded long ago. I was surprised when she produced the deed to find it not recorded—some deeds; I do not remember what deeds.

Q. Having had the experience of your sister Martha failing to record the first deed from Emma Taylor to her of the Barbara Brown property, you had Emma Taylor make another deed of conveyance to your sister of the same property, and yet you did not look after the recording of that deed?

508 A. It was not my business to do that; I very likely suggested it at the time, but I do not know.

Q. This deed appears to be recorded April 7, 1891, the same date as this first deed from Barbara Brown and Emma Taylor to your sister. At whose suggestion were they both recorded on that date? I think you said that it was at the suggestion of Gen. Henkle that the first deed was recorded.

A. I say possibly at the suggestion of Gen. Henkle.

Q. Whatever deeds produced at that time were not recorded, and but for his suggestion you would not have recorded?

A. I presume I would have.

Q. Well, you are a lawyer. Why did you not do it without his suggestion?

A. It was my duty to present what papers I had to my counsel. I received those papers from my sister Martha; I showed them to him, and he then suggested that they had better be recorded.

Q. When did David McIntire die?

A. On the 1st of April, 1884, I believe it was.

Q. Was he a resident of Philadelphia or of this city?

A. Well, he was actually a resident of Washington, but his home was called Philadelphia.

Q. How did he describe himself in deeds of conveyance?

A. Sometimes one way and sometimes the other.

Q. Do you say that when this first deed was made by Barbara Brown and Emma Taylor to your sister Martha six hundred dollars was paid for that property?

A. Yes, sir; about that.

Q. Then why was only one hundred dollars put in the deed?

509 A. She surrendered a note that she held.

Q. Who is she?

A. Martha McIntire surrendered a note that she had and paid the difference.

Q. Surrendered whose note?

A. The note of Barbara Brown.

Q. To whom?

A. To Barbara Brown. They were both there at the time.

Q. Then what did Emma Taylor get?

A. She got her money back again that she had paid.

Q. That she had paid to whom?

A. That was paid to me as trustee.

Q. Do you remember Mr. McIntire, from whom that four hundred

dollars was borrowed by Barbara Brown on her property in which you were the trustee?

A. I know that the note was owned by Martha McIntire at the time of the sale. I do not know who made it in the first place.

Q. Martha McIntire did not make the loan in the first place?

A. No, sir; I did not say that. I said that she owned it at the time of the sale.

Mr. HENKLE: All this matter about Barbara Brown we will go into in the Brown case, Mr. Mackey, and had you not better leave that for that case?

Mr. MACKEY: I want to get this whole matter of Emma Taylor in one batch of testimony, so as not to have to go through a half a dozen books. I shall not investigate this matter again to
510 show the existence or non-existence of Emma Taylor.

Q. You say that Barbara Brown having given her note for four hundred dollars secured upon this property, you foreclosed the trust and Emma Taylor became the purchaser?

A. No, sir; I did not say that. That might be the fact.

Q. Have you not stated that in your answer?

A. I might have said so. She gave a note—what note I cannot say without refreshing my memory—and upon non-payment of the note the property was sold.

Q. And Emma Taylor became the purchaser?

A. Yes, sir.

Q. Was she present and bidding on the property?

A. She was.

Q. Did she ask for any abstract of the property?

A. People do not ordinarily do that at a sale. I do not know whether she did or not.

Q. Did she pay you the money, the whole cash, on that day?

A. No, sir; I never knew that to be done.

Q. She was not to pay you until she had an opportunity to look up the matter and see that it was all right?

A. I do not know that she paid me any money but the deposit. I do not know whether that was paid to me, for it might have been paid the auctioneer.

Q. I understand you to say that she did not pay the whole of the purchase-money on that day?

A. I never knew but one case where a purchaser at a public sale made payment of the whole money on the same date.

Q. You did not make her a deed before she paid the money?

511 A. I think I might have done so, especially if there was another transaction pending upon that, which is according to my recollection.

Q. At what o'clock did this sale take place?

A. The advertisement shows.

Q. Have you a copy of the advertisement?

A. I have somewhere.

Q. Are you able to produce it?

A. Not at this moment.

Q. Will you produce it at the next session?

A. I will produce it at the next session, but I do not think I will do so in this case.

Q. In what paper was it advertised?

A. I cannot tell. I do not think that it pertains to any other case but the Brown case.

Q. Have you looked up the advertisement in the Brown case?

A. Yes.

Q. And you say you have a copy of the advertisement of that property?

A. Yes; I think I have.

Q. And that you cannot remember in what paper it was advertised?

A. No, sir; I cannot.

Q. You say that she purchased that property on that date. Do you remember for how much?

A. The deed will show.

Mr. MACKEY: I suppose the deed will show. I do not think we have that deed. We have a reference to it, but not the deed.

512 WITNESS: Well, I do not recollect.

Q. That foreclosure sale and the payment by Emma Taylor and the conveyance by Barbara Brown and Emma Taylor to Martha McIntire were all one transaction, were they, in which the settlement was made?

A. No, sir; I do not say that. I said it was about the same time. I think very likely it was, but I am not positive about that; the dates will show that.

Q. I understand that Emma Taylor, having purchased this property from you, as trustee, paid you the money, and then when she conveyed to Martha McIntire she got her money back.

A. Well, now, the only way I can answer that is to go into the Brown case.

Q. Explain that.

WITNESS: I do not think I ought to in the Pryor case.

Mr. MACKEY: I think you ought.

A. Martha McIntire held a note of Barbara Brown on this property, and also another note of a larger amount on this property and another property which she owned. She thought she held the first incumbrance on both places. She was a little indifferent about the sale of the I-street property, because she thought she would be secured on the other note and get her money out of the sale, but after the sale of the property numbered 1216 I street to Emma Taylor Mr. John E. Kendall came to me and left the memorandum, which I have, saying that he had sold out the other property

513 in which Martha McIntire was interested, and he claimed any surplus on this sale of the I-street property. When I realized that my sister Martha would lose everything if that was the fact, I then reported the fact to Emma Taylor, and she then withdrew from the sale and transferred the property to Martha McIntire. My sister, Martha McIntire, holds now a note of six hun-

dred dollars, covering this property and another piece of property of Barbara Brown, and that has never been settled.

Q. Then six hundred dollars was not what was paid for the property to Emma Taylor?

A. That was what was estimated.

Q. Explain why you only put one hundred dollars in that deed.

A. Well, I have no recollection particularly as to that one hundred dollars, without something was to be paid to Mrs. Brown. I think something was agreed to be paid to Mrs. Brown, because she was a very poor woman, and we all sympathized with her and offered to aid her.

Q. And it was for that reason that you had her make this deed to your sister Martha?

A. Yes, sir. I made the statement to her and she agreed to it.

Q. Do you say these words "and Emma Taylor, of the same place," were inserted at the same time that the words "Barbara Brown, of the city of Washington," were inserted (handing witness Exhibit A. H. No. 1 in the Brown case)?

A. No, sir; I think that was written in at Judge Helmick's office—that is, the words "Emma Taylor, of the same place."

Q. Well, *now* about this change of the word "them"?

514 A. All the changes in that deed relating to that addition of the name of Emma Taylor were made in his office.

Q. A deed was drawn, purporting to be a conveyance by Barbara Brown to Martha McIntire, conveying this property for a consideration of one hundred dollars, and then, when you took it to Judge Helmick's office, you inserted the name of Emma Taylor?

A. Yes; I did that to save the trouble of writing another deed and because Justice Helmick and one of the witnesses there were going out, and it could not be delayed.

Q. Was Emma Taylor at Judge Helmick's office then?

A. Yes, sir.

Q. You took Barbara Brown there and Emma Taylor there?

A. I took Barbara Brown there. Emma Taylor was there.

Q. Emma Taylor went there by appointment to attend to this matter?

A. I do not say that. She knew Mr. Helmick very well.

Q. She had to sign and acknowledge that deed?

A. Yes.

Q. Did she not go there for the purpose of acknowledging that deed?

A. No, sir; she could not have done so, because I was surprised to meet her there.

Q. And because you met her there you put her name in this deed?

A. Yes, sir; rather than delay drawing another deed.

Q. And you say that Mr. Helmick signed that deed as a witness?

A. Yes.

515 Q. Do you know what brought Emma Taylor to Justice Helmick's office?

A. You asked me that same question awhile ago. I told you I did not.

Q. Did you ever find out why she came there?

A. I would not ask her such an impertinent question.

Q. She happened to be there when you called, and you had her make this deed?

A. No, sir; I do not say that. I say that I was surpeised to meet her.

Q. Did you not say that she happened to be there then?

A. I did not say it as you say it.

Q. After you bought the Pryor property and the Southey property for your sister Martha, she held the property for some time before she made any improvements on it?

A. She did.

Q. Now, when Jenison conveyed the property to Emma Taylor, on April 19, 1882, that deed was put upon record at once, was it not?

A. The deed will show. I do not recollect.

Q. After your sister Martha bought the property from Emma Taylor, she had it some time before she improved it?

A. I said so.

Q. Then she made the contract through you with Waldron to build these houses which are now upon the Pryor property?

A. With the firm of Medford and Waldron.

Q. That, I think you say, is the contract filed as Exhibit A. H. No. 18 in the Pryor case?

516 A. This is it.

Q. That, you think, was witnessed in your office by yourself and your sister, Emma T. McIntire?

A. Yes, sir.

Q. Are those the genuine signatures of yourself and your sister, Emma T. McIntire?

A. Yes, sir.

Q. How was the money paid to Medford and Waldron—by your checks?

A. I have no recollection; some might have been, but I guess it was mostly in cash.

Q. You did make some payments by checks?

A. I may have done so. I do not recollect now. They were paid, however, in full.

Q. Where did you get the cash from?

A. From my sister Martha.

Q. How did she give it to you?

A. In sums from time to time.

Q. About what amounts from time to time?

A. In the amounts that I would report to her—sometimes smaller and sometimes larger.

Q. As much as five hundred dollars or one thousand dollars at a time?

A. I do not recollect one thousand dollars being paid at one time;

still there might have been; but I think it was in sums of less than five hundred dollars.

Q. And this you would keep and pay it out until it was exhausted, and then she would pay you more?

517 A. No, sir; that is not the case.

Q. What is the case?

A. As I said before, she paid me from time to time, as the work was done, when I produced the bills.

Q. In cash or by check?

A. She never paid by check. I never saw her check.

Q. Whose check would it be?

A. It might have been yours, for all that I know.

Q. Was she dealing with anybody else in paying her checks?

A. Yes, sir.

Q. Checks from other people?

A. Yes, sir.

Q. You mean that some of this money was paid to you in that way?

A. It might have been.

Q. Have you no recollection at all about how this money was paid to you by your sister Martha?

WITNESS: Well, do you mean in five-dollar or ten-dollar bills?

Mr. MACKEY: No; whether in sums of three hundred dollars or four hundred dollars in cash or by check?

A. I presume sometimes she paid me as low as twenty-five dollars—sometimes fifty dollars—in cash, and when she paid me as much as five hundred dollars it might have been by check. If by check, it may have been turned over to them as so much cash, and if in cash I turned that cash over.

Q. Did you give her any receipts for the amounts received from her?

518 A. I do not know.

Q. Did you keep any amount of the amounts received from her?

A. I had the receipts of the workmen from time to time and of the contractors.

Q. Did you keep an account of this transaction on your book?

A. I think so.

Q. Will you produce it at the next session?

A. You have asked me enough now to keep me employed a month.

Q. Did you ever have any final settlement with your sister Martha in respect to those houses?

A. This release of the liens filed is the final settlement which shows that everything was paid.

Q. Did your sister Martha ever give you money to keep for her?

A. Yes.

Q. What sums?

A. I cannot remember that.

Q. You cannot remember whether she ever gave you any large sums of money or not to keep for her?

A. My brother and I deposited in the German-American savings bank money which she forwarded from time to time from Philadelphia. The books of the bank, if obtained, will show the account which was kept in the name of Henry McIntire and Edwin A. McIntire, as trustees.

Q. Have you not your bank book or your pass book of that account?

A. I suppose she has.

Q. It would be kept in the name of Henry McIntire and
519 Edwin A. McIntire, as trustees, would it not?

A. If I made a full settlement with her, as I have done, I naturally turned it over to her.

Q. You say that account was kept in the name of whom?

A. In the name of Henry and Edwin A. McIntire, as trustees.

Q. Who is Henry?

A. My brother Henry.

Q. That was the pass book of yourself and brother showing your account with the bank as trustees?

A. Yes, sir; the book I had at that time.

Q. You say that you gave that book to your sister Martha?

A. I say I may have. I do not know.

Q. Have you seen it lately?

A. No, sir. If I had I would not have answered that way.

Q. Do you think that you can find that book?

A. I do not know. I suppose it is in existence somewhere, and possibly I could.

Mr. MACKEY: Please look for that.

Q. That account was kept while your sister was in Philadelphia, was it?

A. Yes, sir; her residence was in Philadelphia, but she was back and forth frequently.

Q. After she came to reside here permanently did you keep the account there?

A. No, sir; the bank failed before that, I think.

Q. You kept no bank account for her after she came to Washington?

520 A. No, sir.

Q. Did she, after she came to Washington, give you any money to keep for her?

A. I remember my sisters, different ones of them, giving me packages of value to put in my safe. What they contained I never asked them. They had their names on the backs of them, but when I learned about the safe deposit company on New York avenue I advised them to take a box up there, and they did some years ago.

Q. You never advised Martha McIntire to keep a bank account?

A. I may have done so. I do not know whether I did or not.

Q. In point of fact she never did keep a bank account here in Washington?

A. I do not know that she did, to my knowledge.

Q. You would know whether she kept a bank account here?
A. No, sir; no more than I would know about you.
Q. Did she give you checks of Emma T. McIntire?
A. I have had checks of Emma T. McIntire. I do not know whether my sister Martha gave them to me or not.
Q. Did Emma T. McIntire have a bank account?
A. Yes.
Q. Where?
A. In the Second National bank for awhile. I do not know whether she kept any before that or not. I think she did, but I am not certain.

Mr. MACKEY: Now, I will be glad if you will produce at the next session that bank book and that statement of the building account with Medford & Waldron, and also the account relating to these transactions with Emma Taylor.

521

WITNESS: I have not said that I had any account with Emma Taylor.
Q. When did you first make the acquaintance of Emma Taylor?
A. Some ten or twelve years or more ago.
Q. That would be in 1881 or 1882?
A. No, sir; I mean since 1878. I could not say more definitely than that. I fixed that date because that is the date that I opened my office.
Q. You made her acquaintance in this city?
A. Yes.
Q. How did you come to get acquainted with her?
A. To the best of my recollection she was introduced to me by Mr. Cathcart Taylor.
Q. He is dead?
A. Yes, sir; at that time he was employed on one of the Philadelphia papers.
Q. That was in 1878?
A. Since 1878. I do not remember what time.
Q. You think it was about 1879 or 1880?
A. Somewhere about that time.
Q. Was Mr. Cathcart Taylor related to her in any way?
A. I thought he was.
Q. I understood you to say that Emma Taylor and your sister, Emma T. McIntire, went to the same writing school in Philadelphia?
A. I did not say anything of the kind.

522

Q. What did you say?
A. I said that my sister, Emma T. McIntire, attended the public schools at Philadelphia, and that I understood that Emma Taylor was a Philadelphia lady and presumed that she attended the Philadelphia schools.
Q. Because of the fact that you understood she was a resident of Philadelphia?
A. Yes, sir.
Q. Did you know whether Emma Taylor had any occupation in this city or not?

A. I thought she had; I thought she was engaged in one of the departments.

Q. Were you under that impression all the time?

A. Yes, sir; because she used to come down F street about the hour that the departments would close.

Q. And it never occurred to you — ask her in what department she was employed?

A. I do not think I ever did.

Q. You never wrote to her to any of the departments, did you?

A. No, sir; not to my recollection.

Q. Has she ever written to you any letters?

A. Yes, sir.

Q. Many?

A. No, sir.

Q. What were those letters about, if you can remember?

A. Well, some of them were of a private nature. I do not think I ought to answer that.

Q. I thought you said some time ago that you had no
523 private business with her; only financial affairs?

A. I did not say that at all.

Q. You did, outside of your business relations, have private relations with her?

A. No, sir.

Q. I do not mean private in the sense of a meretricious one, but you had relations with her?

A. I did not say that I had relations with her at all. She has written me on other subjects besides these properties.

Q. Then they were business letters?

A. Not strictly so. I remember one letter she wrote to me to tell the party who brought the paper to my office whether Cathcart Taylor had been there recently.

Q. You do not remember any others?

A. I have no distinct recollection.

Q. What sort of a hand did she write?

A. You have the deeds there before you.

Q. That is supposed to be her signature; I mean her handwriting?

A. That is the only way I can tell.

Q. Did she write a flowing hand or what sort of a hand? You know what I mean.

A. She wrote such a hand as is written by any one who attended the public schools in Philadelphia.

Q. Did she write such a hand as a girl would write who attended a Spencerian school of writing in Philadelphia?

A. There is no Spencerian school of writing that I am aware of there.

524 Q. Did you not say that you presumed Emma Taylor, from the fact of the resemblance of her signature to that of your sister, Emma T. McIntire, had taken writing lessons at the same school?

A. No, sir; I did not say from the resemblance of the signatures.

I said from the fact that she came from Philadelphia, and that I understood that she attended public schools there, I got the impression—that is, because she wrote the same style of writing that is used in the public schools of Philadelphia.

Q. Well, you say that your sister, Emma T. McIntire, and Emma Taylor wrote the same style of writing?

A. All people of the same school in Philadelphia write the same kind of writing, as all do of the same schools here.

Q. And the handwriting of Emma T. McIntire and Emma Taylor were somewhat similar?

A. A little alike, not much, but still there is a difference between them. So is mine like it, too.

Q. She was a woman that evidently had learned to write well, was she not?

A. Now, you are asking me to guess.

Q. You have seen her handwriting?

A. It has been so long ago that I could not tell without guessing. She knew how to write, but as to her writing well I could not say; not without having it before me at the present time.

Q. She wrote a perfectly legible letter?

A. My recol-ection is that I had no difficulty in deciphering her letters.

Q. Was it a feminine handwriting?

525 A. No, sir; in the schools of Philadelphia the boys and girls write the same style of handwriting. I learned that same style myself. My writing when I went to school was exactly like that.

Q. Look at the signatures on the various deeds of Emma Taylor and tell us which of those signatures corresponds most to the handwriting of Emma Taylor.

A. They are all in her handwriting.

Q. But you say they all correspond to her current handwriting?

A. They vary as your handwriting varies. I have seen some of your handwriting that I could not read at all, and then I have seen other writing of yours that I could read.

Q. Do you remember Emma Taylor making this signature of Emma Taylor to the deed of the 25th of April, 1881, to Martha McIntire?

A. I do.

Q. You saw her make that signature?

A. Yes, sir.

Q. Can you account for that erasure?

WITNESS: Erasure where?

Mr. MACKEY: In her signature.

A. I am not certain that there is one; it might be on the other side of the page, or it might have been there before.

Q. You are not certain that there is an erasure?

A. It appears in holding the paper up to the light that there is an erasure near the signature. I do not know anything

526 about it.

Q. Although you saw her make it?

A. I did not see her make the erasure.

Q. You saw her make the signature?

A. Yes, sir.

Q. While making that signature did she make an erasure?

A. No, sir; I think not. I never saw a person do that. I think I would recollect it if she did.

Q. Did you see her make that signature to the deed of December 30, 1882, from Emma Taylor to Joseph Forrest?

A. I have no recollection of seeing her write that signature. I have no recollection of it whatever now, but I may have seen her.

Q. You delivered the deed, did you not?

A. Yes.

Q. She acknowledged it as her signature, did she not?

A. The acknowledgment is here attached to the deed showing that she did. I think I went with her when she made that acknowledgment.

Q. Did she make such various signatures as those in the letters she wrote to you?

A. She never wrote many letters to me. I do not think these are varied.

Q. Have you any specimens of Emma Taylor's signature besides what you have here?

A. I do not know.

Q. Will you produce them at the next session?

A. No, sir.

527 Mr. HENKLE: I say it is incompetent to produce papers not relating to this case for the purpose of comparison of handwriting, and I object to it.

WITNESS: I say that I will not, because it will take me a long time to hunt through all the papers. It might keep me several days, and it would prevent me attending to my business.

Q. Do you know of anybody in this city now living that knew you and knew Emma Taylor?

A. Yes, sir.

Q. Who?

A. I have produced witnesses here.

Q. Those are all the witnesses whom you are able to produce upon that subject?

A. No, sir; all I am able to just now, but I hope, if allowed, to see two or three persons that I can produce. One is a Mr. Zeverly, who was a clerk in my office. I would have had him here now, only I understand that he shipped before the mast in the Pacific ocean. His brother will let me know when he comes.

Q. You know of no one besides him and those you have produced?

A. Yes, sir; two or three parties whom I have in mind.

Q. Who?

A. I think that is my own matter until I discover them. As soon as I get them I will produce them.

Q. Did Emma Taylor ever purchase or sell any property in this

city that was not a sale to a member of your family or a purchase made through you?

A. I have no means of answering that question. I do
528 not know what she did. I did not know anything more about her doings than I do about what you do. I never ask people about what they have bought.

Q. The witness Atkinson has testified that he saw a lady when he was in your office whom he understood was called Emma Taylor, talking to you, as he supposed, about some property up in Georgetown that she was interested in. Do you remember that circumstance?

A. She might have. I do not know.

Q. Do you know of any property that she was interested in up there?

A. I know that there was some property up there that Cathcart Taylor was interested in. She might have been talking about that.

Q. Do you know of any property up there that she was interested in?

A. I do not know. She might have been interested in that very property. I do not know.

Q. Now, Emma Taylor sold a piece of property to Joseph Forrest and Joseph Forrest gave the check to you?

A. He gave the check to me as agent, I believe.

Q. As agent for Emma Taylor?

A. The check was made to me as agent without saying whom I was agent for.

Q. What did you do with that check?

A. It is here.

Q. You got the money on it, did you not?

A. Yes.

529 Q. What did you do with the money?

A. Turned it over to her.

Q. Did you turn it over to her in cash, or did you turn it over to her by your own check?

A. She might have taken my check. I do not know.

Q. You have stated about a hundred times in this testimony that you might have done this or done that. You know as a lawyer, do you not, that that is not a proper answer to make?

A. And you as a lawyer ought to know that I should not be expected to recollect every little circumstance for twelve years back. I think you as a lawyer would not be able to recollect if I should test your memory about things that happened about ten years ago.

Q. Do you remember now whether you paid her the money in cash or by check?

A. I do not remember.

Q. Do you remember in any of these transactions ever having paid Emma Taylor by your personal check?

A. I do not remember whether I have or not.

Q. If you paid her any cash would you not have taken a receipt from her?

A. Not necessarily so.

Q. Do you mean to say that you as a business man and lawyer would have paid to Emma Taylor nine hundred dollars in cash without taking from her a receipt of some sort to show that you had paid it to her?

A. The receipt would be the possession of the deed.

Q. The deed is a deed by Emma Taylor to Joseph Forrest.
530 He paid the money to you, drew a check to your order, and you cashed that check. Now I ask you whether you would have paid that cash to Emma Taylor without taking a receipt from her of some sort.

A. I may have done so. I cannot answer any other way than by saying I may have done so.

Q. You have no such receipt, have you?

A. I do not know whether I have or not. I have not looked.

Q. Will you please look and see whether you have such receipt?

A. I would having nothing else to do but to comply with your requests.

Mr. HENKLE: I instruct the witness that he need not do it.

Q. Have you any account on your books with Emma Taylor showing that you paid this purchase-money of nine hundred and fifty dollars to her?

A. I do not know whether I have or not.

Q. Now, you had a transaction in which Emma Taylor was concerned with one Alfred Brown, did you not?

A. Yes, sir.

Q. The deed being made May 14, 1883, by Emma Taylor to Alfred Brown, and marked Exhibit A. H. No. 12 in the Pryor case. The record shows that this was not altogether a cash transaction, that Alfred Brown gave his notes running over an extended period for the greater portion of the purchase-money, and that he made you the trustee to secure the payment of those notes to Emma Taylor. When those notes were paid by Alfred Brown, did you make any account of the payments to Emma Taylor?

531 A. No, sir; because I do not know that I paid it to her. You are presuming that the notes were paid to me and I paid them out to her.

Q. Did you not collect all the notes from Alfred Brown?

A. I think not.

Q. Or the greater portion of them?

A. I think not.

Q. A small amount still due?

A. Not on that, but on another trust for money that he has borrowed through me.

Q. None due on the trust made to secure Emma Taylor?

A. None that I am aware of. I think that was released.

Q. All that was paid?

A. I think so.

Q. Was not all that money paid to you by Alfred Brown?

A. I think not.
Q. To whom was it paid?
A. To the holder of the note.
Q. Who was the holder of the note?
A. I do not know.
Q. You did not collect the money yourself?
A. I think not. I know that I did not go to him to collect anything at all. I know that some was paid in my office.
Q. And you paid it to the holder of the note?
A. Yes, sir; but I do not recollect who.
Q. You took no receipt for it?
A. No, sir; nothing but the note; nor does anybody else do it.
532 Q. In this particular transaction you do not remember who the holder of the note was?
A. No, sir; I do not make a memorandum of these sort of things, and I could not remember without a memorandum.
Q. What did you do with the notes?
A. Now you ask me to guess again. I guess I handed them to him.
Q. You think you handed them to Brown?
A. Yes, sir.

Adjourned to March 9, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who further deposes and says:

You asked me, Mr. Mackey, yesterday, to furnish some papers. I thought I could put my hands at once on the bank book; the others I was in doubt about. I possibly can find them, but I have not had time to look. I hand you a number of checks drawn by my brother Henry and myself, as trustees for my sister, Martha McIntire, on the German-American National Bank of Washington, D. C. There may be more checks than those. If I discover them I will produce them. There are forty-nine checks there in all; not all
533 checks, for there are some slips for charges made by the clerk in the bank.

Mr. HENKLE: I here give those checks in evidence.
(NOTE.—And the same are herewith filed in evidence in one batch and marked Exhibit A. H. No. 31.)
Mr. MACKEY: I will look at them hereafter and see what they are.

Thereupon cross-examination (resumed).

By Mr. MACKEY:

Q. Who collected the rents of the Haynes property on 9th street after you sold it to Emma Taylor and until it was sold by her to Alfred Brown?
A. I have no recollection. It is not, however, property on 9th street; it is on E street southwest.

Q. You do not recollect whether you collected them, do you?
A. I do not.
Q. Who collected the rents of the property known as the Ackerman property, sold by you to Emma Taylor April 24, 1882, and by Emma Taylor to Martha McIntire September 6, 1884, during those intervals?
A. I think the man was the inventor of the "Pond Lilly" wash; I cannot recollect his name now.
Q. For whom did he collect them?
A. I do not know.
Q. Did you have anything to do with the collection of the rents of that property during the interval between April 24, 1882, and September 6, 1884?
A. I could not say.
Q. That interval was the interval which existed from the time the property was sold by you to Emma Taylor for Mrs.
534 Ackerman and afterwards sold by Emma Taylor to Martha McIntire?
A. I have no recollection.
Q. Who collected the rents of the property known as the Eller property, described in the bill in that case of Eller *vs.* McIntire, in equity, No. —, being lot —, in square —, during the interval from January 11, 1882, when it was conveyed by Eller to Emma Taylor, and September 6, 1884, when it was conveyed by Emma Taylor to Martha McIntire?
A. I think during that period the house was uninhabitable and not rented.
Q. Who attended to the payment of the taxes during that period and looked after the property generally?
A. I have no recollection.
Q. I believe you have already stated that you have no recollection who collected the rents of the Pryor property after the sale to Emma Taylor and the conveyance by her to Martha McIntire?
A. You showed me some receipts yesterday. I do not know what period they cover. After Mr. Pryor left the property I think no one occupied it at all. I may be mistaken about that, but that is my recollection now.
Q. If any rents were collected, by whom were they collected?
A. I cannot say.
Q. Would they not naturally be collected by you?
A. No, sir; not naturally so.
Q. Well, do you mean to say that in none of these cases I have mentioned, in the intervals elapsing in the case of the Ackerman property, the Haynes property, and the Eller property, and
535 the Pryor property, when the title stood in Emma Taylor, you did not attend to the property and look after it, pay the taxes, and collect any rents that were to be collected?
A. I do not mean to say that. I mean to say that I have no recollection of the matter.
Q. And you have nothing on your books to show?
A. Nothing. My books of that date are destroyed—I mean

destroyed by fire and by the removal of my office—and I have not been able *to*, so far, to get much data.

Q. Did you ever tell Mr. Forrest, the gentleman who bought the property from Emma Taylor on December 30, 1882, that Emma Taylor was a lady residing in Philadelphia?

A. I might have done so; that is my recollection now that she was a resident of Philadelphia. I should describe her now as a Philadelphia, rather than a Washington, lady.

Q. But my question was whether you told Mr. Forrest that she was a lady residing in Philadelphia.

A. I might have said something of that kind to him when she was temporarily residing there, but I have no recollection.

Q. I understood you to say yesterday that your impression was that Emma Taylor was an employee of one of the departments.

A. Yes, sir.

Q. Then how could she have been residing in Philadelphia at the time of that sale if she were an employee of the departments?

A. Just the same way as hundreds of voters in Philadelphia claim their residence there, although employed here.

Q. I am speaking of where she resided at the time of this
536 sale. Did you ever tell Mr. Forrest that she resided in Philadelphia?

A. I might have told him so. If I did I mentioned it in the same sense that applies to voters who claim residence there and are employed here, or I might have mentioned that she was in Philadelphia temporarily.

Mr. MACKEY: I wish in your answers to my questions you would not constantly say what you might or might not have done. I want to know what you did; and, if you cannot remember, say so.

WITNESS: You do not seem to be satisfied when I say I do not remember.

Q. Have you made any effort to refresh your recollection as to who was the holder of the notes which were given by Alfred Brown to Emma Taylor and paid by him?

A. No, sir; I would have no way of refreshing my memory except the notes were produced by some one.

Q. Were not the notes in your possession and kept by you for your collection during the time that they were maturing?

A. No, sir.

Q. Did not Brown call at your office whenever they fell due or about when they fell due and paid you the amount due on the notes?

A. I have no recollection when he called.

Q. I do not ask whether you have any recollection of any specific date when he called, but do you not remember the fact of his calling at your office and paying those notes to you?

537 A. No, sir.

Q. Mr. Eller states in his testimony that when you called at his house about the payment of the interest, or upon some matter in connection with the loan which he had negotiated through you, he told you that he was tired of the matter, and you asked him

whether he was willing to sell the property, and he stated yes; that you went off and came back within a very short time afterwards with a deed prepared to Emma Taylor conveying the property to her. Is that true?

A. I have no recollection of his saying that; however, it is not true. I saw Mrs. Eller, whom I always looked upon as the owner of the property, and my negotiations were with her. Mrs. Eller was sick at the time spoken of, and she and he both wanted to get rid of the property and asked me to take it or asked the holder of the note to take it. I took the holder of the note up there, but on account of its being a saloon she refused to go into the place. I reported the matter to Mrs. Eller. The property was not worth the amount of the note, it being badly burned, and without some assurance the holder of the note would not look to the property for the difference.

Q. What did you do with the note?

A. The note was given to Mrs. Eller.

Q. Are you sure it was not given to Mr. Eller?

A. I think the transaction occurred downstairs, because what makes me say that is that I was not present when the deed was executed by Mr. and Mrs. Eller to Emma Taylor; it was taken by one of their friends who had signed the deed as a witness; I have forgotten his name now—Bloetzner or some such name as that;
538 when it was acknowledged before E. C. Sweet, the notary public, it was turned over to me, and then the note was surrendered to Mrs. Eller. That happened some days, however, after the proposition to sell the property to the holder of the note.

Q. How do you account for the delay in the recording of the deed which was made by Emma Taylor to Martha McIntire of the Ackerman property, the deed being dated September 6, 1884, and not recorded until April 7, 1891?

A. I explained that yesterday—that the deed was in the hands of Martha McIntire, and she has testified that she locked it up in the safe.

Q. When you conveyed a piece of property to Emma Taylor—any of these properties mentioned in these suits—did you record the deed for her or did you give them to her and let her record them?

A. I have no recollection.

Q. If you had taken them for record you would have recorded them immediately, would you not?

A. Certainly.

Q. Well, they were not recorded immediately, were they?

A. I do not know. I could not tell without looking at them. You have the deeds in your possession there.

Q. The note in the Eller trust for three hundred and fifty dollars was made to William T. Galliher. Did William T. Galliher loan Eller the money?

A. No, sir.

Q. How was that transaction?

A. It was just a custom adopted by a majority of brokers

539 of making some one the beneficiary in the note so as to be able to sell the note.

Q. Who loaned the money?

A. I could not tell you now from whom it came originally. Possibly from Martha McIntire. I cannot say. At all events, she held the note—no, she did not hold the note on that property, either.

Q. Well, who held the note?

A. That was held by Emma Taylor?

Q. That is to say, Emma Taylor purchased the note from you?

A. I could not say from me—from the holder of the note, whoever it was.

Q. William T. Galliher was the holder of the note?

A. No, sir; he never held the note.

Q. The note was payable to William T. Galliher?

A. Just in the same way that the first note was payable to Mr. Emmons, but he never loaned the money.

Q. The note was made to William T. Galliher and by him indorsed and given to you?

A. No, sir; indorsed "without recourse."

Q. Indorsed "without recourse" to you?

A. No, sir; not to me.

Q. Well, indorsed in blank "without recourse"?

A. Just put his name on the back "without recourse, William T. Galliher." Something of that kind.

Q. And then you held the note, did you not?

A. I do not know whether I held it or not. I might have sold it immediately. I do not recollect what I did.

540 Q. You said a moment ago that Emma Taylor was the holder of the note.

A. I said at the time of the transaction. When I say "transaction" I mean at the time the deed was made.

Q. Had she not purchased the note from you in the meantime?

A. I do not recollect.

Q. Do you mean to say that she purchased it from some third party?

A. I do not recollect.

Q. Who wrote these cards containing the name of Emma T. McIntire which you say was written in Judge Helmick's office?

A. They were written under Judge Helmick's direction. He had them made, I think.

Q. Were you present when they were written?

A. No, sir.

Q. How do you know, then, that they were written under Judge Helmick's direction?

A. Because it was originally his proposition and he had them written and handed them to me.

Q. You have, then, only Judge Helmick's statement that they were written in his office?

A. His statement and from men in the office who were there at the time.

Q. Who were they?

A. Constable Gibbons is one of the men.

Q. Where is he?

A. He is — the same office which is now occupied by Justice Strider.

541 Q. You say that Constable Gibbons told you that they were prepared in Judge Helmick's office?

A. No, sir; I did not say that. I said that he was present when Judge Helmick handed them to me, and when Judge Helmick made the statement that they were made in his office and under his direction, and then Mr. Gibbons made some remark in regard to them, showing he had knowledge of them at the time.

Q. Did they tell you who had made them?

A. I have no recollection.

Q. Did you have any curiosity to ask who made them?

A. I have no recollection. I very likely did know, but have forgotton who did make them. I intended to put Judge Helmick on the stand as to those cards, but unfortunately he is deceased. Justice Helmick told my counsel about them——

Mr. MACKEY (interposing): Never mind about that. You know that is not testimony.

Q. Then, as a matter of fact, you do not know who wrote those cards?

A. I know that some one in that office did.

Q. How do you know that some one in that office did?

A. Because I was told so by Judge Helmick.

Q. Do you, as a lawyer, undertake to say that that is knowledge?

A. Yes, sir; if it was told to me by a man whose veracity I could not dispute I would believe it. You have several times alluded to me as being a lawyer. I told you in the first place that I do not call myself a lawyer, as I never practised. I read law as a student in college; that is all.

542 Q. You know something of the elementary principles of the law, do you not?

A. I hope I do.

Q. (Handing the witness the testimony in the case of William E. McIntire *vs.* Edwin A. McIntire, in equity, No. 10745, now in the possession of the examiner.) Will you please examine those cards which are on pages 102, 103, 104, 105, 106, 107, and 108 and tell me which ones were written by Emma T. McIntire and which were written simulating her signatures, those being, I believe, the cards which you testified were prepared in Justice Helmick's office?

A. These are the cards produced in that case six or seven years ago, and were at the time marked by Justice Helmick on the back for identification. There might be something of that mark which if I could see now I might probably state something more definitely about them; but none of them were written by Emma T. McIntire and she never saw them. On page 107 is a paper through which only the word Emma appears.

Q. Through an opening placed thereon?

A. Yes; I have forgotten in regard to that paper, and I could not state about it without this paper on top was removed.

Q. You are familiar with the signature of your sister, Emma T. McIntire, are you not?

A. Yes, sir.

Q. Will you tell me whether those look like her true signature or not?

A. The same style of writing that she wrote when in Philadelphia and that those attending the public schools in Phila-
543 delphia wrote.

Q. They resemble her signature, do they not?

A. Yes, sir; they resemble her signature and my writing also, and resembles the writing of another sister of mine, now deceased.

Q. Can you tell me now in what respect they differ from her signature?

A. No, sir; I could not say, except in general appearance. There is something about her writing that is hard to define.

Q. Those signatures were made in imitation of her handwriting, were they not?

A. I presume so.

Q. And made to resemble it as much as possible?

A. That is my recollection.

Q. So that they were intended to deceive persons?

A. They were offered to be shown this witness, who had said that she had seen Emma T. McIntire's writing and knew it well, and the intention was to show that she did not know it well, and that she could be deceived like any one else.

Q. Well, those signatures which were offered in evidence in the Pryor case in chief, purporting to be the signatures of your sisters, Martha and Emma T. McIntire, to certain papers in the orphans' court of this District are genuine signatures, are they not?

A. I have so testified.

Q. There is a deed on record purporting to be a deed from Emma Taylor to Lettie F. McIntire, dated May 31, 1883, conveying
544 the property which was originally the property of William E. McIntire. Have you that deed?

A. I do not think I have.

Q. What makes you think you have not it?

A. Because Lettie F. McIntire does not own that property.

Q. Well, she purchased it from Emma Taylor, did she not?

A. That was a conveyance made to her, I think, without her knowledge; possibly she knew about it afterwards; and the intention of that deed was to get the property out of the hands of Emma Taylor and to preserve it for my nephew, William E. McIntire.

Q. Why, William E. McIntire had sold it to Emma Taylor, had he not?

A. Yes, sir; he sold it to her against my entreaty.

Q. Then William E. McIntire was acquainted with Emma Taylor, was he?

A. He must have been acquainted with her or he would not have

done that. He met her in my office, although he says now he had not met her there.

Q. And she purchased the property from him against your will. Do you remember what she paid for the property?

A. I could not tell without refreshing my memory. It was a small sum.

Q. When the conveyance was made by Emma Taylor to Lettie F. McIntire, who paid the purchase-money?

A. Lettie F. McIntire was my wife. I made the payment for her.

Q. What was the payment?

A. I could not tell now without refreshing my memory.

544½ Q. Was the payment made from money of your own?

A. From money belonging to my wife that I held for her.

Q. And the conveyance was made without the knowledge of your wife?

A. Yes, sir; until after the conveyance was actually made; then I told her in regard to it; then, subsequently, fearing that she might die and the property become involved with her branch of the family, my intention being to save it for my nephew, I had my wife convey to my sister, Emma T. McIntire, who had originally received a deed from William E. McIntire.

Q. Has your wife, Lettie F. McIntire, ever gotten back the money she paid to Emma Taylor?

A. Yes, sir.

Q. Whom did she get it from?

A. It came to me.

Q. Whom did it come to you from?

A. From Emma T. McIntire.

Q. Emma T. McIntire then paid it to you?

A. Yes, sir; she took it herself.

Q. Do you mean to say that Emma T. McIntire is simply holding that for William E. McIntire?

A. That is what I wanted to do, but she says she will not do that now. I do not think that that has anything to do with this case.

Q. Did she purchase that property with the understanding that she was to hold it for William E. McIntire?

A. She says not, though that was my idea.

Q. When did you last see Emma Taylor?

545 A. I cannot recollect.

Q. When did you lose sight of her?

A. When I last saw her.

Q. You do not recollect when it was?

A. No, sir.

Q. Have you any idea as to the time?

A. No, sir; I have not.

Q. I do not know whether I have asked you this or not: You say you corresponded with your sister Martha about purchasing the Pryor and Southey properties from Emma Taylor. Have you any of those letters?

Q. When I said correspondence I meant I either wrote to her or talked to her about it.

Q. Of course, you must either have done one or the other.

A. I might have sent word to her through another person—that I did not do, I know—or I might have telegraphed her.

Q. As matter of fact, you have no correspondence with her in relation to those properties?

A. I would not keep that correspondence that length of time if I had any.

Q. Is it not a fact, Mr. McIntire, that save and except the property which was sold by Emma Taylor to Forrest and the property sold by her to Alfred Brown every piece of property which you originally conveyed to Emma Taylor subsequently found its way to Martha McIntire?

A. I do not know. I thought you had discovered some others; you produced some memoranda some while ago.

Q. There was offered in evidence here (I have not the tes-
546 timony here to refer to) a list of deeds testified to by the witness Woodward in which was a conveyance by or to a certain Emma Taylor, of New York. Was that Emma Taylor the same Emma Taylor who was conveying property to and to whom you were conveying property?

A. I do not know. I know nothing of the transaction you refer to.

Q. Would you swear that it was the same Emma Taylor?

A. I think your question is ridiculous.

Mr. MACKEY: I do not ask you whether the question is ridiculous or not. Perhaps the whole proceeding is ridiculous to you, and I have no doubt you think it ridiculous to hold a man to account.

Mr. HENKLE: He has said that he does not know anything about——

WITNESS: I have already said that I know nothing of the transaction.

Q. Do you consider that an answer to the question?

A. Yes, sir; I know nothing of the transaction, and consequently I cannot know whether it is the same Emma Taylor or who she is.

Q. Do you know anything about the existence of this Emma Taylor with whom you dealt?

A. I do not. I never ask my clients who their father or grandfather is.

Q. You only know, then, or only believe, then, that she came from Philadelphia?

547 A. From her own statements; that is all.

Q. But where she went and when she disappeared you have no idea or knowledge?

A. I have an idea, gained from what Mr. John Taylor told me. That is all. I have no positive knowledge; else I should have gotten her by this time.

Q. You asked John Taylor, did you not, to look for her?

A. Yes, sir; I asked him repeatedly, because I thought he was related to her. I had seen him in her company a number of times.

A. He has testified in regard to that?

A. Yes, sir.

Q. Is his testimony correct?

A. So far as I know. He has told some things I did not know anything about.

Q. Martha McIntire says in her testimony, at page 36 of the Record, that when she wanted to get money from her brothers, meaning you and Henry McIntire, I suppose, which they had invested for her, sometimes they would pay her in cash and sometime- in checks. Have you any memorandum of such payments, either checks or receipts; showing payments to her?

A. I have produced some checks here, forty-nine or more in number. I do not know whether they were drawn to her order or not. I have not looked at them.

Q. Those are the checks which, if you made any payments to her, would be evidence?

A. No, sir; I do not say that. These are not one-tenth or one-twentieth of the number of checks which I and my brother
548 drew on the German-American bank. If I find the others I will produce them.

Q. Particularly checks showing payments to her?

A. If I find any checks at all, I will produce them.

Mr. HENKLE: These checks, Mr. McIntire, on the face of them, do not appear to be paid to her, but drawn to other persons and signed by you and your brother as trustees. Do you mean to say that these checks which you have produced and which purport to be signed by you and your brother as trustees were paid by you as trustees for your sister and on account of your business?

A. They were, every one of them. There may be some of the checks drawn to my order and to the order of my brother, and we used the money for her or handed it over to her. I do not —. I have not looked at the checks more than to see that the checks were on our joint account. I could not state positively about them if I were to look at them now.

Q. Martha McIntire says that you made a great many loans to Mr. Partello. Do you remember anything about those loans?

A. Yes; I made quite a number to William Z. Partello, and I think I made two or three to D. J. Partello, his brother, although I am not positive.

Q. Were they large or small loans?

A. Some of them large and some of them small.

Q. To whose order were the notes made payable?

A. It is impossible for me to tell without seeing the papers.

Q. You have no recollection as to whose order they were
549 made payable?

A. No. The deeds of trust will show.

Q. Will you kindly, at some time during the taking of this testimony, refer us to the record and liber of the trusts securing these loans or as many of them as you can—that is, referring to the loans which you say Martha McIntire made to the Partellos?

A. Well, to ask me to look at the liber and folio is asking me to

go to considerable labor, as it involves some search. She holds one at the present time on the Partello loan. Possibly she calls it the Partello note, because it is on the Partello property on P street between 7th and 8th streets. The note, however, was drawn by a man named Birney, who was at one time the keeper of the saloon next to the police court.

Q. In the basement of the building next to the police court?

A. Yes, sir. The negotiation was made with Partello himself, but the note was made by Birney.

Q. Which Partello?

A I think William Z. Partello.

Q. And then Partello sold that note to Martha McIntire?

A. Yes; and then there was another note on the adjoining property. I think that note was made by Birney also, through mistake. The property belonged to a man named McClelland, at the stamp window in the city post office.

Q. Is that a matter of record?

A. Yes.

Q. I wish you would refer me to the liber and folio of the deed.

550 A. You ask me to do a good deal of labor for you.

Mr. MACKEY: Then I will ask the court to strike out your testimony. I do not want your mere statements.

WITNESS: You can search for it yourself. You ask me to go to the expense of furnishing evidence for you.

Mr. MACKEY: No, sir; I have all the evidence I want.

WITNESS: I can tell you of other notes she made. I cannot refer you to the liber and folio.

Mr. MACKEY: I do not want any mere statements as to what loans had been made. If you have any data which will refer us to the liber and folio of the record showing the trust, I will be glad to have it.

Mr. HENKLE: Then you do not want him to state the loans he knows she has made?

Mr. MACKEY: I do not want him to state mere loans that he says she has made.

Mr. HENKLE: You do not want the loans he knows she has made—you do not want that?

Mr. MACKEY: No.

Q. Do you know of all the loans she has made to him?

A. I do not know of my recollection.

Q. You recollect a great many?

A. Yes, sir.

551 Q. Your recollection is clear about that?

A. Not very clear.

Q. Much clearer than your recollection of the Emma Taylor transactions?

A. No, sir; not at all. Those transactions are much more recent than the others you asked me about.

Q. Who besides Emma Taylor bid at the Haynes and Brown and Pryor sales?

A. I have no recollection. I have had so many sales that I would not be able to remember who bid on them.

Q. Was Emma Taylor herself present at the sales or did you bid them in for her?

A. She was present herself.

Q. Who was the auctioneer in those cases?

A. I think Mr. Coldwell in all of them.

Q. You say those sales were advertised?

A. Yes.

Q. In what papers?

A. In different papers that Mr. Coldwell selected. I could not tell from recollection.

Q. He advertised in the various papers here?

A. Sometimes in The Nation and in The Republican.

Q. Did you ever see the advertisements?

WITNESS: Which advertisements do you refer to?

Mr. MACKEY: Of the Brown and Haynes property.

A. Yes, sir.

Q. Recently?

552 A. Yes, sir.

Q. What paper did you see it in?

A. I did not see it in any paper. I saw a slip cut from the paper. I think it was cut from the Republican.

Q. The National Republican?

A. Yes.

Q. Do you know what has become of Cathcart Taylor?

A. I do not.

Q. Do you know whether he is living or dead?

A. I do not, positively. I heard from one party in Philadelphia some years ago that he had died, and then I heard since that time that he was living in the West somewheres, connected with some paper.

Q. From who did you hear that?

A. I heard it from an old schoolmate of mine, whose name I cannot speak just now, who was concerned in the sale of the Encyclopædia Britt*a*n-ica for the Philadelphia Times when I was in Philadelphia. I asked him because Mr. Taylor was formerly connected with the Times, and I thought he would know.

Q. The witness Atkinson testified that you left the office one day with a woman, whom he understood to be Emma Taylor, for the purpose—I believe he stated that you said that you were going to Justice Helmick's office, or some testimony of that sort; I have not the testimony before me. Did you go with Emma Taylor at that time to Justice Helmick's office?

A. I think he alludes to the time that I took the deed which was made to Forrest. Although I am not positive, I have an indistinct recollection of going with her at that time and having

553 Mr. Forrest wait until I returned.

Q. If you went with her to Helmick's office it was to acknowledge a deed, was it not?

A. Yes, sir; to get the deed after it was acknowledged; possibly to pay the fee for the acknowledgment.

Q. To pay the fee for acknowledging a deed conveying some property in this city, of course?

A. I do not recollect her making any deed conveying property in any other place. I think it was the Forrest deed. I do not recollect going with her more than once to Helmick's office. I remember meeting her there at other times.

Q. I forgot to ask you whether when Mr. Helmick had these signatures of Emma T. McIntire, these simulated signatures of Emma T. McIntire, made he had before him any copies of her signatures to imitate?

A. I could not say positively; I do not recollect.

Q. Would he attempt to make an imitation of her signature without having it before him?

A. I do not know whether he would or not.

Q. Did you furnish him with any of her signatures?

A. I do not recollect.

Q. Did you know anybody who did furnish them, if you did not?

A. I do not. I suppose if any one furnished him with them I would or she would. He knew her very well.

Q. Now, what interest had Mr. Helmick in that case of William E. McIntire *vs.* Edwin A. McIntire, equity, No. 10745, that he should have prepared simulated signatures of Emma T. McIntire for you?

554 A. Nothing more than merely this, that when Mrs. Galliher, my niece, had testified to what I considered a barefaced falsehood I was so shocked that I reported it to him and some of my other friends. I was certain that she never saw the writing of my sister, Emma T. McIntire—that is, that she never saw her write. When I told Mr. Helmick about it he suggested that there was a way to entrap her, and suggested that way. Mr. Helmick had practiced law, and had been a member of Congress, and was a man of some experience here.

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555 (Adjourned.)

556 MARCH 16, 1893.

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Emma T. McIntire.

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Direct examination.

By Mr. HENKLE:

Q. Will you be kind enough to state your name in full?

A. Emma T. McIntire.

Q. And your residence?

A. No. 1309 T street northwest, in this city.

Q. What relation are you, if any, to Martha McIntire and Edwin A. McIntire, parties to this suit?

A. Sister.

Q. How long have you lived in Washington?

A. Since 1882.

Q. Where were you born and where did you spend the early part of your life?

A. Philadelphia, Pennsylvania.

Q. And you came to Washington when?

A. I came to Washington to live in 1882.

Q. Had you been in Washington before that?

A. Yes, sir; I came to my brother Henry's funeral in 1879,
557 and also on a visit in the year before I moved here.

Q. In 1881?

A. Yes, sir.

Q. And in 1882 you came here to live?

A. Yes, sir.

Q. And with whom did you come?

A. With my mother and sisters.

Q. What sisters?

A. Martha and Ada.

Q. And you have been living — and keeping house ever since?

A. We have been keeping house together ever since.

Q. You have a niece, Mrs. Galliher, have you not?

A. Yes.

Q. What is her name?

A. Annie Laura Galliher.

Q. She is a daughter of whom?

A. Of my brother Henry.

Q. How long has she lived in Washington?

A. I could not tell exactly just now.

Q. Was she very young when she came here?

A. Yes, sir; quite young.

Q. Is she familiar with your handwriting?

A. I do not think she is. She never saw me write.

Q. You are quite sure she never saw you write?

A. I know she never saw me write.

Q. What does the capital letter "T" in your name stand for?

A. The capital letter does not stand for any name except what I gave myself and what my father used to call me in baby-
558 hood.

Q. What was that?

A. My father called me "Tinsey Ush" and I called myself when quite a baby, when I first commenced to talk, "Tots." I put the capital letter "T" in to distinguish me from other Emma McIntires.

Q. You were christened, then, what?

A. Emma McIntire.

Q. No middle name at all?

A. No.

Q. Have you ever been called by any branch of your family "Emma Taylor McIntire"?

A. No, sir; decidedly not.

Q. Were you ever known in your brother Henry's family, Mrs. Galliher's father's family, by the name of Emma Taylor McIntire?

A. No, sir; I was known in my brother Henry's family as "Aunt Emma."

Q. Were you ever called by anybody in that family "Emma Taylor McIntire"?

A. No, sir; never by any one in that family.

Q. You have heard before that Mrs. Galliher has said that you had been known as "Emma Taylor McIntire," have you not?

A. In these suits I have. That is the first I ever heard of it.

Q. How were you distinguished from Emma McIntire—by the addition of the capital letter "T," did you say?

A. Yes.

559 Q. I do not know but what I interrupted you when you explained why you put the capital letter "T" in your name. Will you please explain that again?

A. There are three Emma McIntires in our family in Philadelphia. I always wanted a middle name because all my friends seemed to have one, and my father called me "Tinsey Ush." I called myself in my babyhood "Tots," and I thought that would be a good letter to have for a middle letter, the capital letter "T."

Q. And you just adopted it for those reasons?

A. Yes, sir.

Q. And you say that in your uncle Henry's family you were known as what?

A. In my brother Henry's family I was known as Aunt Emma.

Q. And nothing else?

A. Nothing else.

Q. What was his own daughter Emma called?

A. She was called "Emmy." I was called "Aunt Emma." I was never called "Emmy."

Mr. MACKEY: In what case is this testimony taken?

Mr. HENKLE: In the Pryor case, and to be used in all the Emma Taylor branch of the other cases.

Q. In equity cause No. 10745, of William E. McIntire *vs.* Edwin A. McIntire, Emma T. McIntire, and Letitia F. McIntire, Mrs. Galliher was examined as a witness, and while she was testifying as to your handwriting certain cards purporting to be your signature were submitted to her, and she was asked her opinion as to whether they were your genuine signature or not. Now, I show you

560 one of those cards, on page 102 of the testimony of the complainant in that case, and ask you to state whether that is your signature or not.

Mr. MACKEY: Counsel for the complainant says that if this testimony is intended to contradict the testimony of Laura Galliher, as given in that suit, he objects to it as incompetent and irrelevant, it being a suit to which the complainant was not a party.

Mr. HENKLE: Counsel for the defendant says that is the precise objection that he made when this testimony was offered by Mr. Mackey, and that the testimony is now referred to for the purpose of contradicting the testimony of Laura Galliher in the Pryor case.

A. It is not my signature.

Q. Now, I call your attention to a similar card on page 103 of the same testimony and ask you the same question.

A. It is not my signature.

Q. I call your attention to a similar card on page 104 of the same testimony and ask you the same question.

A. It is not my signature.

Q. I call your attention to a similar card on page 105 of the same testimony and ask you the same question.

A. It is not my signature.

Q. I call your attention to a similar card on page 106 of the same testimony and ask you the same question.

A. It is not mine.

Q. I call your attention to the name Emma, on page 107
561 of the same testimony, and ask you whether that is your signature or not.

A. That is not my writing.

Q. On page 108—I ask you a similar question as to the name on that page.

A. None of these are my writing.

Q. I again call your attention to the two cards on page 104 of the same testimony, being Exhibits Nos. 7 and 8. I wish you to particularly examine them and say whether either of them are written by you.

A. I did not write either of them.

Q. And how as to Exhibit No. 6?

A. I did not write it.

Q. You wrote none of the cards that have been exhibited to you?

A. No, sir.

Q. When did you first see these cards?

A. About five minutes ago.

Q. Do you know anything about the writing of those cards?

A. I heard about them.

Q. You have no knowledge of your own as to the writing of them?

A. No, sir.

Q. I hand you Exhibit A. H. No. 14 in said equity cause No. 10745, of William E. McIntire *vs.* Edwin A. McIntire, which purports to be a deed dated December 30, 1882, from Emma Taylor to Joseph Forrest, and ask you to look at the signature of Emma Taylor to that deed and state whether you wrote that signature or not.

562 A. I did not write the signature.

Q. Do you know who did write it?

A. I did not see anybody write it. I presume Miss Taylor wrote it.

Q. You say that you know you did not write it yourself?
A. I am positive I did not write it.
Q. Did you ever see it before it was shown to you to-day?
A. No, sir.
Q. When did you first see it?
A. Five minutes ago.
Q. I hand you a paper marked Exhibit A. H. No. 2 in the case of Barbara Brown *vs.* Edwin A. McIntire and others, purporting to be a deed dated September 6, 1884, from Emma Taylor to Martha McIntire, and ask you to look at the signature of Emma Taylor to this deed and say whether or not you made that signature.
A. I did not write it.
Q. Do you know who did?
A. I did not see anybody write it.
Q. Did you ever see it before to-day?
A. I think I have seen this deed.
Q. Where have you seen it?
A. In the possession of my sister Martha.
Q. Now, will you look at the signature of the subscribing witness, William Helmick—first let me ask you whether you are familiar or not with the signature of Justice William Helmick?
A. Yes, sir; I have seen him sign his name many a time.
Q. And you think you know his signature?
A. Yes, sir.
563 Q. Is that his signature?
A. Yes, sir.
Q. Now, I want to ask you whether you know the signature of one H. Richie, which is attached to this deed also as a subscribing witness?
A. Yes, sir; I have seen him write receipts and his signature many times.
Q. Were you sufficiently familiar with it to identify it?
A. Yes, sir; I think I am.
Q. Will you state whether that is his signature or not?
A. That is his signature.
Q. Is he living or not?
A. He is dead.
Q. Where did you see him write?
A. In the office *in* my brother, Edwin A. McIntire.
Q. I hand you Exhibit A. H. No. 12 in this equity cause No. 12761, of Pryor *vs.* McIntire, purporting to be a deed made on May 14, 1883, from Emma Taylor to Alfred Brown, and ask you to look at the signature to the deed and state whether or not you made that signature.
A. I did not make that signature.
Q. Do you know who did?
A. I do not know; I presume Miss Taylor.
Q. Will you look at the signature of the subscribing witness, William Helmick, and state whether or not that is the genuine signature of Squire Helmick?
A. That is Judge Helmick's signature.

Mr. MACKEY: We admit that that is his genuine signature;
564 that is, not knowing anything about it, we believe it to be a genuine signature.

Q. I hand you Exhibit A. H. No. 14 in this case of Pryor *vs.* McIntire, purporting to be a deed from Emma Taylor to Martha McIntire, and, calling your attention to the signature of Emma Taylor, ask you if you wrote that signature?

A. I did not write the signature to this deed.

Q. Did you ever see it before?

A. I think I have.

Q. Where did you see it?

A. In the possession of my sister Martha.

Q. Will you look at the signature of William Helmick as a subscribing witness to that deed and state whether or not that is his genuine signature?

A. That is his signature.

Q. Does this signature of Emma Taylor bear any resemblance to your handwriting?

A. I do not think it looks a particle like mine.

Q. I hand you Exhibit A. H. No. 1 in the said case of Barbara Brown *vs.* McIntire, purporting to be a deed bearing date April 25, 1881, from Barbara Brown and Emma Taylor to Martha McIntire, and, calling your attention to the signature of Emma Taylor, ask you whether you made that signature or not?

A. No, sir; I did not make this signature.

Q. Will you look at the signature of one of the subscribing witnesses, William Helmick, and state whether or not that is his genuine signature?

A. It is his genuine signature.

Q. Do you know the signature of Samuel A. Peugh?

565 A. No, sir.

Q. Look at the signature of Floyd Harleston and state whether or not you know his signature.

A. Yes, sir.

Q. Is that his genuine signature?

A. That is his genuine signature.

Q. How did you come to know his signature?

A. I have seen him write as a clerk in the office of my brother, Edwin A. McIntire.

Mr. MACKEY: We have not denied that is the signature of Mr. Harleston.

Q. I want to ask you now if you ever knew or met this lady, Emma Taylor?

A. Yes, sir; two or three or four times.

Q. Will you be kind enough to give us each occasion, according to the best of your recollection?

A. The first time it was at a sale on or about the Easter holidays in the year before I moved to Washington, in 1881, on I street.

Q. Whereabouts on I street?

A. No. 1216 I street northeast, in this city.

Q. You met her at that sale at what time?
A. About the Easter holidays.
Q. What was it a sale of?
A. Of a house.
Q. Do you know what the house was?
A. It was a small house.
566 Q. Did you give the number there?
A. No. 1216 I street northeast.
Q. Well, you say that was the first time you ever met her?
A. Yes.
Q. How did you ever know her?
A. I was introduced to her as the lady purchasing the property.
Q. Well, how was the sale, at public auction?
A. At public auction.
Q. To whom was the property knocked down?
A. To this Miss Taylor or to Mrs. Taylor.
Q. And was she present, do you say?
A. She was present.
Q. And after the sale or before were you introduced to her?
A. During the progress of the sale, I think I was.
Q. By whom were you introduced to her?
A. By my brother, Edwin A. McIntire.
Q. Will you be kind enough to tell us how you came to be at that sale?
A. I was on a visit to Washington and, not being accustomed to sales before private residences in Philadelphia, I wanted to attend one, and this was the only one in progress at the time that I remember of.
Q. When you say it was the only one in progress you mean——
A. (Interposing.) I mean that my brother had charge of, which I knew about.
Q. Well, did he invite you to go with him?
A. He invited me after I invited myself.
567 Q. How did you know he was going to have the sale?
A. I was stopping at his house and he incidentally spoke about the sale.
Q. And you then proposed to accompany him?
A. I proposed to accompany him. I did not know what it was like, never having seen it in Philadelphia.
Q. How did you go to the sale?
A. In his buggy.
Q. Were any other ladies than you and Miss Taylor at the sale?
A. I do not recollect that just now.
Q. What manner of looking person was she, as you remember her?
A. Of about medium size, and I think she had brown hair.
Q. Well, as nearly as you can come to the age of a lady, what would you suppose her age to be?
A. I should judge between twenty-five and thirty-five years of age.
Q. Now, I want to ask you with what degree of confidence you

testify to the fact of being at that sale and the sale taking place, and also to the fact of your meeting Miss Emma Taylor there?

A. I am positive I was there.

Q. And that the sale took place?

A. And that the sale took place.

Q. And that you met Miss Taylor there?

A. And that I met Miss Taylor at the sale.

Q. You cannot be mistaken about any of these facts?

A. I cannot be mistaken.

Q. Now, when did you next meet her and where?

A. I met her at the office of my brother, Edwin A. McIn-
568 tire, and in the street, after I moved here.

Q. Well, how often did you meet her at your brother's office or in the street?

A. In all about three or four times.

Q. Did you or not have any conversation with her upon these occasions or casual meetings?

A. No, sir; I do not think I did. I may have, but I do not remember now.

Q. Are you able to state whether or not you saw her in your brother's office attending to any business in the line of his business?

A. I saw her in my brother's office talking to him, but I always went in the background when he had business—when he was attending to the private business of people.

Q. And you did not hear what the business was?

A. I did not hear.

Q. How did you happen to be at your brother's office?

A. I was there as a clerk for quite a number of years.

Q. Commencing when and ending when?

A. Commencing about 1882 and ending about seven years afterwards.

Q. What department of the business did you take charge of?

A. I was general clerk. I took general charge when he was absent.

Q. Now, this being at the sale that you have spoken about—it is a little exceptional for a lady to be at a sale. I want to know whether you were in the habit of going to sales afterwards.

569 A. Yes, sir; I have attended quite a number of sales.

Q. With whom?

A. With my brother, Edwin A. McIntire, and alone.

Q. You mean public sales of real estate?

A. Yes, sir.

Q. And why did you go to these sales?

A. Because I am interested in the sales of property.

Q. Did you go at any time with the view of being a purchaser?

A. Sometimes.

Q. Were you ever trustee in a deed?

A. Yes, sir; I have been trustee.

WITNESS: In a deed of trust, do you mean?

Mr. HENKLE: Yes; in deeds of trust.

WITNESS: Yes, sir; I have been trustee several times.

Q. Did you know Justice Helmick quite well?

A. Yes, sir; I knew him very well.

Q. How near was your office or your brother's office, where you were employed, to his?

A. Justice Helmick's office was about four doors from my brother's for awhile and then next door after he moved for several years.

Q. Well, what were the business relations between your brother and Justice Helmick?

A. Judge Helmick used to come into my brother's office two or three times a week, sometimes twice a day, talking to him, if the door was open as he passed by the office in warm weather.

570 He would talk to him or to me or whoever happened to be in the office.

Q. Was your brother's business such as demanded the acknowledgment of deeds, landlord and tenant cases, and all that, done before Justice Helmick?

A. Yes, sir.

Q. Can you tell whether Justice Helmick knew Emma Taylor or not?

A. Yes, sir; I think he did.

Mr. MACKEY: I object to the question and to the answer thereto, first, because it is necessarily hearsay testimony; and, secondly, because the witness does not attempt to give more than an opinion about it.

Q. Upon what do you found your opinion or belief that he was acquainted with Emma Taylor—have you ever seen them in the company of each other?

Mr. MACKEY: I object to that question as manifestly leading and suggestive.

Mr. HENKLE: Well, it is leading and I withdraw it.

Mr. MACKEY: Yes; after you make your suggestion then you withdraw it.

Q. What reason can you give for the opinion that Justice Helmick knew Miss Taylor?

A. Because as a man I knew he would not witness a deed without he knew the individual.

571 Q. Well, what do you know as to whether he was particular about that or not?

Mr. MACKEY: Objected to as leading.

A. I always considered him particular. I have seen him be very sharp in regard to some people.

Q. How do you mean?

A. Wanted a special introduction by some people who knew the parties.

Q. Who knew the parties making the acknowledgment?

A. Yes, sir.

Q. And he would object to it?

A. He would not take the acknowledgment unless he had this introduction.

Q. By persons that he knew?

A. By persons that he knew.

Q. How often have you seen him do that?

A. I cannot recollect.

Q. More than once?

A. I think about two or three times.

Q. Now, would it have been possible for Justice Helmick to have mistaken Miss Taylor for you?

Mr. MACKEY: Objected to as calling for the opinion of the witness, being manifestly improper and irrelevant and immaterial.

A. No, sir; he knew me personally.

Q. Where were you educated?

A. In Philadelphia.

572 Q. Did you learn penmanship there?

A. Yes, sir.

Q. Will you be kind enough to take those five deeds which I have heretofore shown you, purporting to be signed by Emma Taylor, and look at the signatures again, and especially to the initial letters E. and T., and state whether or not there is a resemblance to those of your own initial letters in your own signature?

A. (After examining all five of the deeds.) They look a little like mine.

Q. Will you be kind enough to state now whether there is a resemblance in those signatures to similar letters in any system of penmanship with which you are familiar?

Mr. MACKEY: Objected to for the reason that the witness has not been shown to be familiar with any system of penmanship.

A. They look very much like the Spencerian and Potter & Hammond systems taught in the schools of Philadelphia.

Q. Have you a copy of the Potter & Hammond system?

A. Yes, sir; I have one of their copy books here.

Q. Will you please produce it?

A. Here it is.

Mr. HENKLE: I here give in evidence that copy book, especially pages 10 and 17 thereof.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 32.)

Mr. MACKEY: The offer of this book in evidence is objected

573 to as irrelevant, immaterial, and incompetent on the ground that its source is not shown, and it does not appear in any way who printed the book nor when it was printed, and for many other reasons is manifestly in violation of the rules of evidence.

Q. Where did you procure this book?

A. I have had it since I was a child in the schools of Philadelphia.

Q. Did you use that book in the schools of Philadelphia?

A. That book was used in the schools of Philadelphia.
Q. Where did you get that particular copy?
A. I have had that copy.
Q. Did you use that copy?
A. I used a copy similar to this. This has not been used.
Q. I want to know whether you have ever taught penmanship.
A. Yes, sir.
Q. Do you consider yourself an expert in penmanship?
A. I consider myself somewhat of an expert.
Q. I want to know whether you have the habit of dropping one of the strokes in the letter "m" in the name "Emma" in your signature, so that it reads "Emna" instead of "Emma."
A. No, sir; I do not consider myself negligent in writing.
Q. Did you ever do that, to your knowledge?
A. No, sir; not to my knowledge.
Q. Can you conceive it possible that you should do it?
A. No, sir.
Q. Do you know a man by the name of Frizzell?
A. I saw him once in the office of my brother, Edwin A. McIntire.
574 Q. What was he doing there?
A. He came there to tell him about a water pipe being on the border of the premises next to Mr. Frizzell's premises.
Q. Where was that?
A. On I street northeast.
Q. Do you know the number of the house?
A. I believe it was number 1216 I street northeast.
Q. Well, what did he say to your brother?
A. He said that the water pipe was on his premises, and he tore it up. He wanted to know the owner's name, and my brother said a Philadelphia lady, and my brother said, "I will hold you responsible for tearing up this pipe;" and Mr. Frizzell said, "I know the owner—I have looked at the records—and it is Emma Taylor." My brother did not make any remark after that, but just let it go.
Q. What do you know, if anything, with regard to your sister Martha's financial condition? Running back as far as 1880 or 1881, what has been her financial condition?
A. Well, I have had charge of her finances for some time.
Q. Will you tell us what her financial condition has been?
A. Well, she has some little sum of money.
Q. Some property?
A. Some property.
Q. Will you tell us, if you know, how much money she had before she came to Washington?
A. I do not know how much money she had, but she had several thousand dollars.
Q. Can you give us any instance in which you remember
575 her getting any considerable sums of money before she came to Washington to live?
A. Yes, sir. My father in his lifetime gave her one thousand dollars several times, and sometimes fifteen hundred dollars.

Q. Can you form any idea as to what those gifts from your father would have aggregated?

A. About five or six thousand dollars, I should judge.

Q. That was before she came to Washington to live?

A. Yes, sir. My father died in 1876, and he gave it to her in his lifetime.

Q. Well, about her earning money—what do you know about that?

A. I only know she earned it.

Q. Have you any idea as to how much money she earned and saved before she came to Washington?

A. I know she had money out in real estate before she came to Washington.

Q. In Washington?

A. In Washington.

Q. What do you know, if anything, as to her having been engaged in financial operations other than real estate in Washington, through your brothers or anybody else?

A. Her business transactions were all through my brother, Edwin A. McIntire.

Q. Well, what do you know as to what was her habit about furnishing him money to use for her?

A. Yes, sir; I gave him sums for her. I had charge of her funds.

576 Q. When you speak of real-estate transactions do you mean that she bought and sold real estate or real-estate notes?

A. Real-estate notes.

Q. Well, have you any idea as to the extent of those financial transactions of your sister Martha?

A. Well, they were several thousand dollars.

Q. Well, of late years, since you and she came to Washington, you say you have had charge of her finances—of her money?

A. I had it as trustee of her affairs. She entrusted me with her affairs.

Q. Well, now, did she get money from any other source, do you know, by gift from any other person than your father?

A. Yes, sir; from my sister Sally.

Q. Is she living?

A. She is not living.

Q. When was that?

A. Before 1881. She died in 1881.

Q. Before you came to Washington?

A. Yes, sir.

Q. Do you know how much she got from your sister Sally?

A. Two or three or four thousand dollars.

Q. Was it in money?

A. Yes, sir.

Mr. MACKEY: Ask her if she got it by will, or how.

Q. How was that—was it a gift or by will?

A. It was by gift. She did not leave any will. She gave it to her before she died.

577 Q. I want to ask you whether she distributed her property in anticipation of her dying.

A. Yes, sir; she knew she was going to die and she gave it away before she died, knowing she was going to die.

Q. Now, I want to ask you whether she received anything from another sister.

A. My sister Ada died and left her half of her estate.

Q. And to whom did she leave her other half?

A. To me.

Q. When was that?

A. In 1885.

Q. How much did each of you get?

A. About three thousand dollars each.

Q. I hand you Exhibit A. H. No. 18 in this Pryor case, purporting to be a contract between Medford and Waldron and Martha McIntire for the building of certain houses, and call your attention to the signature of Emma T. McIntire as a subscribing witness and ask you whether that is your genuine signature or not.

A. That is my writing. I signed that.

Q. State whether those are the genuine signatures of Medford and Waldron and of your sister Martha.

Mr. MACKEY: We have not disputed that.

A. Yes, sir; their genuine signatures.

Q. You saw them sign that paper?

A. Yes, sir; I saw them sign that paper.

(Adjourned.)

578 MARCH 17, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who further deposes and says:

You asked me the other day, Mr. Mackey, to give you references to any deed or deed of trust, at least, where Martha McIntire was secured by notes, and incidentally today in looking over some other matters I came across two, one from Anne Chapman, dated October 21, 1885, and recorded in Liber 1150, folio 124, to secure a note of two thousand dollars on lot 132, in Partello's subdivision of square 445, which note was known to my sister as one of the Partello notes. I do not know whether she referred to it in her testimony, but if she did she called — the Partello note; and another one from John Pestel, dated January 5, 1883, to secure a note of $2,246, recorded in Liber 1026, — 470. I have not the lot and square, but the house is No. 812 10th street northwest.

Another matter you asked me to search for was as to the boxes of my sister in the safe deposit company at 15th and New York avenue. My sisters, Martha and Emma T. McIntire, rented a box there on the second or third of March, 1885, while preparations were being made for the first inauguration of Cleveland. I have

not the receipts. I find the date by looking over my diary.
579 They had another box there, but the date of that I do not remember.

Mr. MACKEY: Have you made any search for the book, checks, and papers that I asked you during your cross-examination to produce?

WITNESS: One I understand was a sales book. I do not remember all that you asked for. I told you at the time I could not recollect all that you asked for, and you said you would give it to me in writing. I have not had the opportunity and am not well enough to do it. I am not well enough to be here today.

Mr. MACKEY: If I give you such a list will you make search and produce them if you can find them?

Mr. HENKLE: What are they? It depends upon what they are, whether he is under any obligation to search for them.

Mr. MACKEY: Well, I will look over the cross-examination and make a list.

Cross-examination (resumed).

By Mr. MACKEY:

Q. On page 319 of your cross-examination you said that one letter you remember getting from Emma Taylor was a letter asking you whether Cathcart Taylor had been there recently, meaning, I suppose, your office. Can you remember when you received that letter?

A. No, sir; I cannot remember the date of it.

Q. Was it before or after the Barbara Brown foreclosure sale?

A. I have no way of fixing the date.

580 Q. Had you been acquainted with Cathcart Taylor any length of time before he introduced you to Emma Taylor?

A. No, sir.

Q. Had Cathcart Taylor any business at your office that Emma Taylor should be writing to you and asking you whether he had been at your office or not?

A. Yes, sir.

Q. What business had he there?

A. Business of a private nature. When I say of a private nature I mean in regard to business in my office.

Q. Not of a personal nature?

A. Yes, sir; all business is of a personal nature.

Q. Not of a social nature, then?

A. No, sir; and yet he has called on social visits there and at my house.

Q. How long after Cathcart Taylor introduced you to Emma Taylor was it when you received this letter from Emma Taylor asking you whether Cathcart Taylor had been at your office or not?

A. I think it was not very long, but I have no way of fixing the time.

Q. Over how long a period did your acquaintance with Cathcart Taylor extend?

A. To the best of my recollection, for several years.

Q. When do you remember last having any business with him or seeing him or conversing with him?

A. I have no way of fixing the date.

Q. Well, did you have any business with him after the
581 Barbara Brown sale?

A. I could not tell that, the two not being connected in any way.

Q. Well, you can fix the time by the fact of the Barbara Brown sale?

A. No, sir; all I can say is that he called upon me while I had my office on F street.

Q. Well, you had your office on F street for a very long time?

A. Yes, sir.

Q. Over a period of how many years?

A. From twelve to fifteen years.

Q. Well, of course, we know that he called on you during those twelve or fifteen years, but when was the last time you saw him?

A. I have no way of fixing the date.

Q. Cannot you recollect whether you saw him five or six or seven years ago?

A. No, sir; I have no way of fixing the date at all. He was in to see me a number of times, covering, to the best of my recollection, several years. He would come on from Philadelphia, as I understood, and sometimes stay only a few minutes in my office, but I have no way of fixing the time of those visits.

Q. That was after he introduced you to Emma Taylor?

A. Yes, sir; after he introduced me to her.

Q. For several years after that?

A. I have no way of telling.

Q. Cannot you sufficiently refer your memory to some fact
582 which you remember, and then refer it to your last interview with Cathcart Taylor?

A. No, sir; I cannot.

Q. And you would not venture to say whether your last interview with him was five years ago or ten years ago?

A. No, sir; I would not, because there was nothing to impress it particularly upon my mind.

Q. Have you seen him within the last ten years?

A. I would not swear whether I have or not.

Q. Well, what is your recollection about it—that is, whether you have seen him within the last ten years or not?

A. I have answered you three or four times, Mr. Mackey, that I have no recollection of it.

Q. Your sister, Emma T. McIntire, testified yesterday that she went with you to the sale of a piece of property at No. 1216 I street northeast; that was a foreclosure sale, was it not?

A. Well, it was a sale under a deed of trust.

Q. And it was the property of Barbara Brown, was it not?

A. Yes, sir.

Q. Who was the purchaser at that sale?

A. Emma Taylor.

Q. To whom did Emma Taylor subsequently convey that property?

A. She and Barbara Brown together conveyed it to Martha McIntire.

Q. That is the same piece of property that the daughter of Barbara Brown has brought suit for, is it not?

A. Yes, sir.

Q. Were Cathcart Taylor and Emma Taylor related, that
583 you know of?

A. I thought they were, but I do not know whether they were or not; I have been told that they were not related.

Q. You heard Mr. Peugh's testimony about Emma Taylor being a child of Barbara Brown?

A. Yes, sir.

Q. What have you to say about that?

A. I know nothing at all about her mother or father, and never inquired.

Q. You say that your sister Martha recorded the deeds, or at least what deeds were recorded she recorded—that is, what deeds were made to her you always gave to her to record; do I understand you to say that?

A. I do not think I said that she recorded them, because I have no recollection, but I believe she did.

Q. But when a deed was made to her of property you always gave her the deed to record and you never recorded it yourself?

A. Yes, sir; I would not say always, but it is my impression that I always did.

Q. Who took them off the record—that is to say, who went to the recorder's office and got the deeds?

A. That I have no recollection of.

Q. Is it not a fact that all the deeds that were ever made to Emma Taylor or to Martha McIntire were delivered to you by the recorder of deeds after they were recorded?

A. I could not say as to that. I know not what deeds Emma Taylor has made, only these produced here, and of these I have no knowledge who took them off the record.

584 Q. Have you any recollection about it?

A. Well, no, sir.

Q. I am speaking of deeds that were made by you as trustee to Emma Taylor and were recorded. Now, I understood you to say that those deeds you gave to Emma Taylor to record and did not record them yourself?

A. That is my recollection, because that is the way I always do.

Q. Do you mean to say that you did not go to the record office and get those deeds yourself?

A. I mean that I have no knowledge who got them and have no recollection.

Q. Of any of them ever having been delivered to you?

A. No, sir.

Q. Well, in the same respect as to the deeds made by Emma

Taylor or by you to Martha McIntire, do you mean to say that you yourself were not delivered those deeds by the recorder of deeds or by some official in his office?

A. I have no recollection.

Mr. MACKEY: Add to my question, "after they were recorded."

WITNESS: Add to my answer, "I think they were not."

Q. I believe you have stated that you never collected any rents for Emma Taylor?

A. No, sir; I did not say that.

Q. Do you mean to say that you did collect rents for her?

A. I said it has been so long ago that I could not tell whether I have or have not.

585 Q. If you collected any rents for her it would have been by her authority and direction, would it not?

A. Not necessarily so. It might have been by her implied authority.

Q. Well, was it?

A. I could not say.

Q. Have you any recollection of collecting any rents for Emma Taylor of any of these properties—the Haynes property, the Barbara Brown property, the Pryor property, and the Southey property?

A. I have no recollection of it.

Q. Do your books show any accounts of rents collected for her?

A. Some of my books were burned, I told you, in the fire at my office on F street.

Q. When did you have that fire at your office on F street?

A. Shortly before I left that office, but I had no way of refreshing my memory as to the exact date.

Q. Was that an extensive fire—were just the books burned or was your office burned?

A. No; the office did not burn. It caught fire from a waste-paper basket.

Q. That fire that took place there destroyed the waste-paper basket?

A. I did not say that; I said that it took fire from the waste basket and it destroyed a number of my papers.

Q. And it destroyed this book with the others?

A. Some of my books were destroyed.

586 Q. How many books were destroyed?

A. I could not tell you.

Q. Was that rent book a small or large one?

A. Not a very large one.

Q. Was it a book no larger than a pass book for a bank—a little book three by four inches and containing twenty pages, or a book eight by ten inches square? Give us some idea what size book it was.

A. The book I refer to is the ledger.

Q. A large or small ledger?

A. Just a medium-sized ledger of three or four hundred pages.

Q. And how large a book?

A. I could not tell you.

Q. Ten inches one way by sixteen inches the other?

A. Somewheres like that, I suppose; it may have been a little larger than that.

Q. That book was completely destroyed by the waste-paper fire?

A. No, sir; I said destroyed.

Q. Completely destroyed?

A. Destroyed so that I could not use it and I had to open a new book.

Q. What did you do with the book that was damaged by the fire?

A. I do not really know.

Q. And that was when?

A. Just before I left the office.

587 Q. How long ago did you leave the office?

A. Three or four years ago. I also had a fire at my house that destroyed some of my papers.

Q. Have you any recollection of keeping an account for Emma Taylor in that book?

A. Mr. Mackey, I have answered you about a dozen times that I have not. You repeat your questions so often that it makes me sick.

Q. Who paid the taxes on this Forrest property during the time that Emma Taylor owned it?

A. I do not remember.

Q. Do you mean to say that you did not pay them?

A. I mean to say that I do not remember. You asked me that question before a number of times. If I remembered I would tell you.

Q. I understand you to say that after Mrs. Pryor vacated the property there it was not rented?

A. No, sir; I did not say that. I do not recollect anything about it.

Q. You do not recollect whether it was rented or not?

A. No, sir.

Q. Is that your signature?

A. Yes, sir.

Q. What have you to say about that?

A. I do not recollect anything about it.

Mr. MACKEY: This paper is a note dated September 26, 1884, addressed to Mr. Pryor, signed by E. A. McIntire, with his business card stamped at one end of it and reading as follows:

588 "Will please deliver to Mr. Mack the keys of No. 108 F St. N. W."

(NOTE.—Said paper is marked for identification M. & B. No. 1.)

Q. What do you say about that?

A. That is not my signature. I do not know anything about it.

Q. It is signed down at the bottom "E. A. McIntire" and then with a small "H." Do you know what that "H" stands for?

A. No, sir.

Q. Did you not have a clerk in your office at that time whose last name began with an "H"?

A. I do not remember.

Q. This postal card is dated March 13, 1883, and is addressed to Thomas Pryor, No. 108 F street northwest, which is what is known as the Pryor property in this suit, is it not?

A. Yes, sir.

Q. And it says, "Please call and pay rent." Now, with that card before you do you say that you were not collecting rents at that time?

A. I do not know anything at all about it.

Q. And you do not recognize the handwriting at all, do you?

A. No, sir.

(NOTE.—Said postal card is marked for identification M. & B. No. 2.)

Q. I understood you to say that you did not collect the interest for Mr. Jenison, but that Mr. Jenison collected his own interest.

589 A. I said that in regard to the $550 note.

Q. Well, how about the four-hundred-and-fifty-dollar note?

A. I said nothing about that.

Q. Well, did you collect any interest for him on that?

A. I cannot say positively.

Q. You have no recollection of having charge of that matter at all?

A. No, sir; I cannot say that I have.

Q. Well, look at that paper now and see if that does not refresh your recollection about it?

A. That is my handwriting, but I do not recollect it at all.

Q. This paper says, "Rec'd, Wash'n, D. C., Nov. 15, '80, of Mr. Pryor the sum of eighteen dollars for six months' interest due 2nd inst. on note for four hundred and fifty dollars, dated May 2, '80. E. A. McIntire, trustee." Now, that paper having been read to you, you have no recollection of it?

A. No, sir.

(NOTE.—Said paper is marked for identification M. & B. No. 3.)

Mr. MACKEY: I am through with Mr. McIntire until he brings those books and papers which I have called for, and, of course, if he produces them, I will have to examine him about them.

WITNESS: The sales book which you called for is quite an old book that I have not preserved at all. Such properties as were still for sale I copied on the new register, but I do not know what has become of the old one. In regard to the German-American bank book I would not naturally have that, and yet, still, I thought I could find it among some of the papers of my brother

590 Henry, because he managed that more than I did. I could not find anything except the checks which I have already produced, but if I find it I will produce it. The receipt from Emma

Taylor for the Forrest money, I do not know where to look for that. That is asking me to go into an awful lot of work. I am not well enough to do that, and I have not been well enough for some time past to engage in anything of that kind.

Q. You still insist, I believe, that you did not collect the Emma Taylor notes from Alfred Brown?

A. I should certainly recollect if I collected so many as that. I know I did not collect them. They were a series of notes, I think.

Q. You gave Alfred Brown a release of the notes that were paid?

A. I think he has a release. I would not have given it unless the notes were produced.

Q. Did you not take all the notes when they were all paid?

A. I never do such a thing as that.

Q. Do you say that you have not and never did have all those notes?

A. I suppose I had them when I made the release to see them, for I would not have made the release without seeing them. I think he has a release. I am not certain about that. If he has a release, then I have seen the notes—saw them cancelled or whatever is stated in the release as to the payment of the debt.

Q. I asked you, on page 472 of your cross-examination, to explain how it happened that Emma Taylor and Barbara Brown conveyed together the Barbara Brown property to your sister, Martha
591 McIntire, for the consideration alleged in the deed of one hundred dollars. Your explanation of that matter, after going over it since it has been in type, is not very clear to me. Will you not explain it more fully—that is, explain why it was made by Barbara Brown and Emma Taylor jointly to Martha McIntire, and how it was that the sale of the property was for the alleged consideration of one hundred dollars?

A. I tried to make myself plain in my explanation there. Martha McIntire held a deed of trust on the property No. 1216 I street northeast, which is the Barbara Brown property, and also another deed of trust upon that property and upon a property owned by the same Barbara Brown on Maryland avenue. On the evening of the sale of the property on I street—on the evening after the sale, I mean to say—I received word from Mr. John E. Kendall that he was holder of the second trust upon that I-street property, and that he had sold out the Maryland-avenue property——

Mr. HENKLE (interposing): You mean that he was the holder of the deed of trust on the Maryland-avenue property or the I-street property?

WITNESS: He was the holder of both, he said. In his note he only told me that he was the holder of the second trust on the I-street property, and that he had sold out the Maryland-avenue property. The property having been conveyed to Emma Taylor, Martha McIntire would be a loser to a considerable sum—to the extent of the amount of the note for six hundred dollars—and,

upon my representation of the facts to Emma Taylor, she
592 agreed to convey her purchase to Martha McIntire, and that note of six hundred dollars is still held by Martha McIntire and has never been paid.

Q. Who gave her the note of six hundred dollars?

A. Barbara Brown.

Q. Secured upon what?

A. Upon the property which is the subject of these suits and also property in which she was interested on Maryland avenue.

Q. All in one deed?

A. Yes, sir. That deed is of record.

Q. Now, who foreclosed the Maryland-avenue property?

A. Mr. Kendall told me he did.

Q. Under a prior deed of trust?

A. That is my understanding.

Q. And that cut out Martha McIntire's security?

A. On that property, and then it left her the I-street property to obtain security for both notes which she had of Barbara Brown, amounting to over one thousand dollars.

Q. She held a note of four hundred dollars, which constituted a first lien on the I-street property, and then, in addition to that, she held a note for six hundred dollars?

A. Six hundred and fifty dollars, I think it was, and that note has never been paid.

Q. Well, now, why was the consideration made one hundred dollars when Barbara Brown was already owing to your sister six hundred dollars?

A. I hardly remember now, without it was that the prop-
593 erty was figured at six hundred dollars, and that she wanted to make it so as to surrender the note of four hundred dollars.

Q. Who got the one hundred dollars?

A. I have no recollection of any amount being paid.

Q. Well, how did you come to put Emma Taylor's name in the deed afterwards? It was first a deed by Barbara Brown to your sister for one hundred dollars, was it not?

A. I have forgotten the consideration.

Q. And then you afterwards added the name of Emma Taylor into it?

A. The agreement was that I was to draw deeds from both to her. The idea of getting a deed from Barbara Brown was to show that she was perfectly well satisfied with the transfer, and I am under the impression that there was some little change handed to her because she was a very poor woman, and, another thing, my sister Martha wanted to obtain some authority to collect the different drawback taxes which were to be collected on account of damages to the property.

Q. You had already conveyed to Emma Taylor, had you not?

A. No—oh, yes.

Q. So that Barbara Brown had no title to convey to your sister?

A. Yes; under the rules of the tax office, as I understood them

and understand them now, drawback taxes are payable only to the party who was the owner of the property at the time the damages happened, and that property was damaged by being cut down some fifteen feet or more.

Q. How would a deed from Barbara Brown to Martha
594 McIntire give Martha McIntire the right to the drawback?

A. That is my understanding.

Q. I asked you how it could be. You have just stated that the practice of the tax office is to give it to the person who owned the property at the time of the damage, irrespective of any conveyances subsequently made, have you not?

A. The deed would be an assignment of her right to collect it.

Q. Was there any assignment?

A. I think the deed recites that; that is my recollection, but I am not positive.

Q. That was the purpose for which it was drawn?

A. That was one purpose and the other was to show the satisfaction of Barbara Brown in the transfer; and I am under the impression also that one idea in having Mr. Peugh as a witness there was to show his satisfaction also, because he was the trustee for Barbara Brown and was her adviser for a number of years.

Mr. MACKEY: That is all—subject to the calls which I have made upon Mr. McIntire for the production of certain books and papers, etc.

EDWIN A. McINTIRE.

* * * * * * *

(Adjourned.)

595 MARCH 20, 1893.

* * * * * * *

EMMA T. MCINTIRE, who further deposes and says, being recalled for—

Cross-examination.

By Mr. MACKEY:

Q. You say you came to Washington to live in 1882; about what time in 1882 did you come?

A. July.

Q. You say that you were here on visits before that in 1879, 1880, and 1881. Were your visits long or short?

A. Short.

Q. Were you at the office of your brother, Edwin A. McIntire, during any of those visits?

A. I do not remember.

Q. You do not remember whether you were clerking there for him or not?

A. Not before I moved here.

Q. You did not go down there and help him in his office any at all?

A. Not before I moved here.

Q. You are younger than your sister, Martha McIntire?
A. I am.
Q. You were of age, however, in 1880?
596 A. I was of age in 1880.
Q. And for some time before that?
A. And for some time before that.
Q. How did you come to find out there was to be a sale of this property, No. 1216 I street northeast, known as the Barbara Brown property?
A. I was staying in the house of my brother, Edwin A. McIntire, and he incidentally spoke while at home of a sale, and I wanted to go and attend it, because I was not used to any sale in front of any property.
Q. Well, you went there in his buggy?
A. I went there in his buggy.
Q. And you say you saw this lady there?
A. I saw the lady that purchased the property at the sale.
Q. Did you see her bid on the property?
A. I do not recollect that now. I did not know much about auction sales in front of property then.
Q. Where was she? Was she on the pavement?
A. I presume she was. She was not in the street.
Q. Did you stay in the buggy?
A. Yes.
Q. How did she come to be introduced to you?
A. Because my brother was talking to her and I was with my brother.
Q. Was your brother on the pavement or in the buggy?
A. He was on the pavement, in the buggy, and all around.
Q. When he was talking to her was he on the pavement or in his buggy?
597 A. I do not recollect, it has been so long ago.
Q. He brought her up to the buggy and introduced her to you?
A. I presume he did.
Q. Do you not remember?
A. I do not know whether he brought her up or whether she came up herself.
Q. She would hardly come up and introduce herself to you.
A. She may have come up to speak to him.
Q. You cannot remember the circumstance. Is that it?
A. I cannot remember how she came up.
Q. How old a woman do you say she was?
A. I would say she was between twenty-five and thirty-five.
Q. That is a very wide margin, between twenty-five and thirty-five. A woman at twenty-five does not look to be thirty-five years of age. Can you not come closer than that?
A. I cannot, to a lady's age.
Q. You cannot say whether she looked nearer thirty than she did thirty-five years of age?
A. No; paint and powder deceives.

Q. Did she paint and powder?
A. I do not know.
Q. Well, now, do you consider yourself somewhat a judge of the ages of persons?
A. Sometimes I do not.
Q. Well, then, this particular person, Emma Taylor, was of so vague an age that you could not come at it by ten years. Is that it?
A. I told you that she was between that age, as I judged.
598 Q. Well, now, between twenty-five and thirty-five might make her only twenty-six or it might make her only thirty-four years of age.
A. Well, she might have been twenty-six or thirty-four.
Q. That is as near as you will venture upon it?
A. That is as near as I will venture.
Q. You do not think she was anything over thirty-five, do you?
A. I do not know.
Q. Well, do you think she was over twenty-five?
A. I told you I thought she was between twenty-five and thirty-five.
Q. Were you present at any of these other sales to Emma Taylor?
A. I was present at a sale at which I understand she bought—No. 916 E St. S. W., in this city.
Q. That is where Alfred Brown is living?
A. Yes.
Q. You were present there?
A. Yes.
Q. Was Emma Taylor there?
A. I do not remember about that.
Q. Was your brother at that sale on E street?
A. Yes, sir.
Q. Did you see the auctioneer cry the property off?
A. I suppose so, for I was there.
Q. Well, we don't want you to have to suppose about it. Do you remember that you saw the auctioneer?
599 A. I saw the auctioneer.
Q. And heard him cry off the property?
A. Heard him cry off the property.
Q. And you are perfectly positive about that?
WITNESS: About what?
Mr. MACKEY: About having been to that sale and having seen the property sold?
A. I am perfectly positive, because after that I loaned money on that same house and I knew it was that house.
Q. Now, you say that you had charge of your sister Martha's funds, and you said, I think, that you were trustee for her. I wish you would explain to what extent you had charge of her funds.
A. Carried her money to my brother's office.
Q. When she would give you money you would carry it to your brother's office for her?

A. She would tell me to get the money for her and carry it to my brother's office.

Q. Get it where?

A. At the bank.

Q. What bank?

A. The Second National bank of this city.

Q. The bank where you or she had a deposit?

A. Where I had a deposit.

Q. You had a deposit there and you deposited her money in your bank?

A. I deposited her money in conjunction with mine.

600 Q. When did you open your account with that bank?

A. In 1882.

Q. What month in 1882?

A. I do not recollect that now.

Q. Can you get that date?

A. I do not know; I may.

Mr. MACKEY: Well, I wish you would, and let me have it at the next session.

Q. Was it in the early or latter part of 1882?

A. I do not remember that now.

Q. Have you kept a bank account there continuously since then?

A. I have since then.

Q. Did you keep any account of the moneys that you had in the bank there for your sister Martha?

A. I kept it in conjunction with mine.

Q. I mean did you keep any account of how much was yours and how much was hers?

A. No.

Q. How were you able to ascertain?

A. Memory.

Q. Would she give you money often to put in bank for her?

A. She gave me money occasionally.

Q. Do you mean by that not often?

A. Sometimes often and sometimes not so often.

Q. Large or small sums?

A. Both large and small.

601 Q. Was all her money deposited with you?

A. I think I had charge of all her money—all her cash in bank.

Q. You frequently deposited there yourself, did you not?

A. Yes.

Q. About what was the proportion between you and your sister as to the amount; did you have more than she or she have more than you in the account?

A. Sometimes all I would put in would be hers and sometimes all I put in would be mine.

Q. I mean that which was in the bank and that which you put in the bank.

A. I do not know.

Q. Did you have any other way of ascertaining except from your memory?

A. Her memory and my memory.

Q. You never would keep it in a book or on paper of any sort?

A. I trusted my memory.

Q. Do you remember the circumstance of her paying for this Pryor property?

A. I have an indistinct remembrance.

Q. Do you remember how much it was she paid?

A. No.

Q. Did she ask you to get twenty-five hundred dollars out of the bank for her?

A. I do not remember. I have gotten about that amount for her.

Q. How long ago?

A. I do not know now. I cannot remember.

602 Q. Well, can you remember that about in 1884 she asked you to get twenty-five hundred dollars out of the bank for her—that is, about that date of the sales of the Pryor and Southey properties, when she bought?

A. I do not recollect that amount now. I might have done it, but I do not trust to my memory after it is done.

Q. Did she ever draw out money from the bank herself on checks given her by you?

A. No; I do not think she did.

Q. All money drawn out of the bank was drawn on checks?

A. On checks.

Q. Checks given by you?

A. By me or some one else.

Q. Would you put on those checks what they were for?

A. No.

Q. Have you anything or any memoranda to show that you were keeping your sister's money in the Second National bank in conjunction with yours?

A. No, sir; I have not anything now.

Q. Well, did you have?

A. When I started I did—a few papers—but they are destroyed now.

Q. Have you any checks upon which you drew money out of the bank for her?

A. It would not show that it was for her. I could not tell myself by looking at it whether it was for her or not.

Q. Have you any checks from the year 1882 to the year 1886?

A. I presume I have.

603 Q. Will you produce some of those checks which you drew for your sister?

A. I cannot tell which were for my sister.

Q. Have you all the checks?

A. I may have; I do not remember. I would have to look to see whether I have or not. I do not know whether they were destroyed or not.

Q. Will you produce them at the next session?

WITNESS: My checks?

Mr. MACKEY: Yes.

A. Not my checks.

Q. You will not produce any of those checks?

A. I will not produce my checks. I have no pecuniary interest in this affair.

Q. You will not produce any checks on that bank for yourself or your sister?

A. I will not produce any checks that I drew for myself.

Q. Will you produce any which you drew for your sister?

A. I do not know which ones I drew for my sister.

Q. And you wish us to understand that among all the checks which you have drawn for her at various times, as high as twenty-five hundred dollars, you say you cannot identify any of those checks now?

A. I can't identify any of those as hers just now.

Q. Of course you cannot identify them now because you have not the checks here; but if you have those checks before you could you not pick out some of the checks which you know you drew
604 on account of your sister?

A. I do not recollect; it being so far back, I could not tell which I drew for my sister.

Mr. MACKEY: Now, Miss McIntire, I will ask you when you go home to get your checks and make that effort, and if you are successful, to bring them here at the next session.

WITNESS: I told you that I would not know what checks I drew for my sister; I told you that a half a dozen times.

Mr. HENKLE: And you do not propose to go over your checks?

WITNESS: I told him before that I did not intend to go over them.

Q. Do you know anything about your sister Martha keeping a bank account in Philadelphia?

A. Yes, sir; I knew she kept a bank account there.

Q. At what bank?

A. I know the name of the cashier. I do not remember the name of the bank.

Q. What is the name of the cashier?

A. Theodore De Bow.

Q. You know that she kept an account there. Do you know whether she kept an account at the savings bank on Chestnut street?

A. She kept an account at the Walnut-street savings bank—I mean the savings bank on Walnut street near 7th, I believe it is.

Q. Do you know anything about her deposits in those banks?

605 A. I do not recollect now.

Q. Did you ever see her make deposits in Mr. De Bow's bank, or in the Central National bank, I think it is?

A. I was with her when she drew some out or put some in, I do not recollect which.

Q. I believe both you and your brother, Edwin A. McIntire, have testified that you clerked in his office. When did you commence to clerk for him?

A. In 1882.

Q. Shortly after you came here?

A. Shortly after I came here.

Q. Within a month or two?

A. I was there off and on for a short time after I came here. A year or two after that I was there every day.

Q. Did you ever see Emma Taylor come into the office?

A. Yes, sir; I have seen Emma Taylor come into the office.

Q. How often?

A. I remember I have seen her two or three times.

Q. Your brother said that he had business with Cathcart Taylor. Do you remember him?

A. No sir; I do not know him.

Q. You do not remember his ever coming into the office?

A. I do not now; I may.

Q. Do you remember your brother speaking of him at any time?

A. Yes, sir.

Q. While you were clerking for your brother?

A. I heard him speak of him several times.

Q. You heard him speak of him several times as having
606 business with him?

A. Yes.

Q. What would he say about him?

A. That Cathcart Taylor was a Philadelphia man. That is all I remember just now.

Q. Did he say that he had business with him?

A. I do not remember.

Q. You say you heard your brother speak of him?

A. I remembered him on account of the odd name.

Q. You remembered your brother speaking of Cathcart Taylor. Now, I ask you what he said about him, and all you say that you can remember is that he said Cathcart Taylor was a Philadelphia man.

A. I remember Cathcart Taylor being a Philadelphian. I remember my brother speaking of him and saying that he was a Philadelphian.

Q. How did the matter come up?

A. I do not remember. I remembered the first name, Cathcart, because I knew a family of Cathcarts in Philadelphia.

Q. Well, he must have spoken about Cathcart in order to enable you to remember the name, must he not?

A. Yes. He spoke of Cathcart Taylor in his talk, and I remembered the name Cathcart because I knew a family of Cathcarts in Philadelphia.

Q. He said what about Cathcart Taylor?

A. Oh, I do not remember now.

Q. Was he talking about him in reference to business transactions or socially?

A. I told you I do not remember now.

607 Q. But do you remember that he did talk about him?

A. I remember that he did talk about him.

Q. More than once?

A. I have an indistinct remembrance that he had a picture of him.

Q. I am not asking you about a picture. I ask you whether you heard your brother speak more than once about Cathcart Taylor.

A. I was telling you exactly what I knew about Cathcart Taylor. I remember his speaking of him, and I have an indistinct remembrance that he had a picture of him.

Q. But what he said about Cathcart Taylor, whether in reference to business transactions or not, you do not know?

A. I do not remember now.

Q. You kept your brother's books, did you not?

WITNESS: When?

Mr. MACKEY: At his office.

A. I did sometimes.

Q. You had access to his books?

A. Some of his books; not all.

Q. Did you ever see in his books any reference to an account with Cathcart Taylor or any reference to any business transaction with Cathcart Taylor?

A. I do not remember now.

Q. How much was the largest amount of money you had on deposit at the bank to the joint account of your sister and your self and deposited in your name solely?

608 A. I do not remember.

Q. You cannot tell?

A. No, sir.

Q. Did you ever have your bank book balanced?

A. Yes.

Q. Have you your bank book?

A. Yes.

Q. How long have you had that bank book?

A. I do not know; I do not remember.

Q. Have you had more than one bank book since you became a depositor?

A. I have.

Q. *Have* many others have you?

A. Believe one or two.

Q. Since 1882?

A. Yes.

Q. Were the balances struck on those books?

A. I believe they were.

Q. Have you any objection to producing them?

A. Yes, sir; I have.

Q. Do you refuse to produce them?

A. I refuse to produce them when it is my money connected with the bank and when I have no pecuniary interest in this suit.

Q. Can you not ascertain from those books what balances you had?

A. I suppose I could.

Q. Do you object to ascertaining and stating?

A. I object to telling how much I have there.

609 Q. I do not ask you to state how much you have there, but how much you had there in 1882, 1883, 1884, and 1885, when you were keeping your account with your sister.

A. It is my business how much I had there in those years.

Q. You and your sister came here together from Philadelphia, did you not?

A. We moved here at the same time.

Q. You have produced a copy writing book in evidence here. Do you know whether Emma Taylor ever took writing lessons in Philadelphia?

A. I do not know.

Q. You filed a petition in the orphans' court on August 5, 1885, in case No. 1532, in the matter of the estate of David McIntire, being a petition of Martha, Emma T., and Sarah McIntire for partial distribution, and heretofore referred to in this cause. Were you much in need of money at the time you filed this petition?

A. Yes, sir. I am always in need of money.

Q. You mean you always want money?

A. Always want money, and need it, too.

Q. Was your sister Martha in need of money at the time she filed this petition?

A. Just like I am, always needing it.

Q. You mean by "needing" it you are always in want of it?

A. We always want it.

Q. Were you much in need of money then?

A. I consider that I am in need of money until I am a millionaire.

610 Q. But were you much in need of money then?

A. Of course I was much in need of money then and much in need of money now.

Q. Was there any present necessity for it then?

A. Yes; because I wanted it.

Q. That is what you understand by the word necessity and need, or are you simply trying to avoid the question?

A. I needed it like I need money all the time.

Q. You state in this petition "the petitioners are much in need of their shares of said estate." What did you mean to have the court understand by that?

A. That I was much in need of it.

Q. And that is the best answer you care to give to that question?

A. That is a very good answer, I think.

Q. Did you sign that petition?

A. I suppose I did.

Q. Look at it and see.

A. Yes, sir; this is my signature.

Q. Is this your signature to this paper filed July 1, 1885, in said cause No. 1532, in the orphans' court, in the matter of the estate of David McIntire, and heretofore referred to in this cause?

A. Yes, sir; this is my signature.

Q. Did you sign this one filed March 13, 1891, in said cause No. 1532, in the orphans' court, in the matter of the estate of David McIntire, petitioning the court to revoke the order requiring
611 the administrator to turn over the assets of the estate to the custody of S. S. Henkle and James M. Johnston, and to restore the assets to the custody of the administrator, etc.?

A. Yes, sir.

Q. Did you sign this petition to the same cause No. 1532, filed May 5, 1886, and being the petition of Sarah McIntire and others, praying the court to allow S. S. Henkle five hundred dollars in the custody of the court?

A. Yes, sir; that is my signature.

Q. Did you sign this paper filed in this cause No. 1532, in the orphans' court, in the matter of the estate of David McIntire, being the petition of Martha McIntire, praying that Edwin A. McIntire be appointed administrator, *c. t. a.*, and assent of three other heirs thereto?

A. This is my signature.

Q. You testified about your signatures in your evidence offered by Gen. Henkle and stated that you had heard about those cards, but had never seen them until you were examined in reference to them. From whom did you hear about them?

A. I think Judge Helmick spoke about it to me.

Q. What did he say to you?

A. I do not remember.

Q. Cannot you remember anything that he said to you about them?

A. No.

Q. Then, how do you know that Judge Helmick spoke to you about —?

A. I think he did.

Q. Did your brother ever speak to you about it?

612 A. Yes, sir; he said that Judge Helmick had done it, I believe.

Q. Did he tell you who was doing it?

A. I do not know. I do not remember.

Q. Did you ever know who made those signatures?

A. No, sir; I do not.

Q. And you swear that you did not make them yourself?

A. I am positive that I did not make them myself.

Q. And you were not curious to know who were imitating your signature?

A. They told me about it at that time—some one told me—and I knew why it was done.

Q. Did they tell you who was doing it?

A. I do not think they ever told me who did it.

Q. And you were not curious enough to ask who was imitating your signature?

A. No, sir; not at that time.

Q. Well, since then?

A. No.

Q. Have you never asked your brother?

A. I did not know whether he knew or not.

Q. The question is, Did you ever ask him?

A. I do not remember asking him. I understand that he did not know.

Q. Did you ever write in Mrs. Galliher's album?

A. I do not remember.

Q. Or in an album which she had there; whether hers or not I do not know—a family album?

613 A. I do not remember.

Q. And now I understand you to say in reference to the checks which you drew on the bank—on the Second National bank on 7th street—for your sister that you are unable now to produce a single one?

A. I am unable to produce any showing that she drew it out.

Q. Of course, you have already told me that the checks will not show on their face that she drew them out; but what I want to know is whether you can say that any of those checks or any particular one of them was money drawn out for her at her request?

A. I cannot tell now. I know that I did draw money out for her several times—quite a number of times.

Q. How much?

A. Five hundred dollars, one thousand dollars, and, I think, two thousand dollars.

Q. Well, you know that you have drawn out five hundred dollars for her. How many times did you draw out five hundred dollars for her?

A. I do not remember.

Q. Do you remember how many times you drew out one thousand dollars for her?

A. No, sir; I cannot recollect.

Q. More than once?

A. I do not recollect.

Q. You do not remember that you drew out one thousand dollars more than once?

A. I do not remember.

614 Q. Do you recollect ever drawing out one thousand dollars for her?

A. I told you that I recollect drawing out one thousand dollars for her and, I think, two thousand dollars.

Q. Do you remember drawing out more than two thousand dollars at any one time for her?

A. I do not recollect.

Q. Do you recollect drawing out two thousand dollars for her more than once?

A. I do not recollect now.

Q. Did you ever draw out two thousand dollars at one time for yourself?

A. I do not recollect now.

Q. Do you not think that you could get these checks that you drew for her?

A. No, sir; I could not.

Q. That is, the checks upon which you drew out one thousand dollars and two thousand dollars and twenty-five hundred dollars for her?

A. No, sir; I could not tell.

Redirect examination.

By Mr. HENKLE:

Q. You said, I believe, Miss McIntire, that you and your sister jointly took a box in the safe-deposit company shortly after you came to Washington, in 1882?

A. In Cleveland's first administration. I guess that was in 1885.

Q. In 1885 you and your sister took a box in the safe-de-
615 posit company jointly?

A. Yes, sir.

Q. And do you know whether your sister kept money in that box?

A. Yes, sir; she keeps money—cash—in there.

Q. Has she done so ever since she took it?

A. Ever since.

Q. Have you any idea as to the amount of cash she has kept in that box?

A. No, sir; I do not recollect now.

Q. Did both of you have keys?

A. Yes, sir.

Q. And you each go to the box when you choose and deposit and draw out?

A. Yes, sir.

Q. Do you know whether she has kept a larger or a smaller part of her cash money in that box or in the bank in your account?

A. She has kept the larger amount in the safe-deposit box.

Q. Do you know whether your sister Martha deposited money in the Central National Bank of Philadelphia for which she took certificates of deposit?

Mr. MACKEY: Objected to as leading and because it is a matter which can be proven by written testimony, and therefore oral evidence of it is incompetent.

A. I remember that she had certificates before she had the book.

616 Q. Do you know whether those amounts for which she held certificates appeared upon her book or not?

A. I could not tell that now.

Q. Do you know where your sister Martha collected her rents—where she got her rents for her real estate?
A. From my brother, Edwin A. McIntire.
Q. At his office?
A. Yes, sir; at his office.

Recross-examination.

By Mr. MACKEY:

Q. Was this safe-deposit box rented jointly by your sister and yourself?
A. Yes, sir.
Q. You did not have separate boxes then?
A. No, sir.
Q. Where was this safe-deposit bank that you rented the box in?
A. Fifteenth and New York avenue and on Pennsylvania avenue.
Q. You rented first a box in the safe-deposit company at 15th and New York avenue, as I understand, some time in 1885?
A. About the 3rd or 4th of March, 1885.
Q. And subsequently you gave up that box and took another box jointly in the safe-deposit company on Pennsylvania avenue?
A. Between 9th and 10th streets.
Q. That is the Washington Safe Deposit Company?
A. I think so.
Q. Prior to that time she had been depositing her money in the bank with you?
617 A. Yes, sir.

Redirect examination.

By Mr. HENKLE:

Q. Has she since you rented that box continued to keep money with you in the bank with your account?
A. Yes, sir; she does.
Q. Mr. McIntire suggests to me to ask you whether she had also kept money at home about the house.
A. Not much.
Q. Do you know whether she has kept any money in your brother's safe?
A. Yes, sir; I know she has.
Q. In considerable amounts?
A. I could not tell that now.

Recross-examination.

By Mr. MACKEY:

Q. If she had kept money at home would you have known of it?
A. Yes, sir; certainly.
Q. What do you mean by "not much"?
A. Just enough to pay her immediate debts.

Q. Thirty or forty or fifty dollars?
A. Oh, not that much.

(Adjourned.)

618 MARCH 29, 1893.

* * * * * * *

MARTHA MCINTIRE, who, having read over her testimony heretofore given in this case of Mary C. Pryor *vs.* Edwin A. McIntire *et al.*, and before the signing thereof, makes the following corrections:

On page 204 Mr. Mackey asked me if I kept all my money in my brother's bank, and I answered, "Yes, sir; as trustee for me." I meant that it was kept in his bank before we came to Washington to live. My answer looks as if I meant that all the money I ever had was kept in his bank. I did not mean to say that all the money I ever has was kept in his bank, but that all the money which I sent on to my brothers to invest for me in Washington was kept in their bank before I came to Washington. On page 218 Mr. Mackey asked me this question, referring to the amount of money which I kept in the house, "Was it as much as one thousand dollars?" and I answered, "I hope not as much as one thousand, although I had more in the house than I ought to have had." I wish to correct that statement in this way: Mr. Mackey was asking me just before that as to whether I ever had as much as five thousand dollars in the house at one time, and I thought he was
619 asking me if I kept five thousand dollars in the house in Philadelphia. I did not keep five thousand dollars, although I had over one thousand dollars there.

By Mr. MACKEY:

Q. How much over one thousand dollars?
A. Well, I suppose I had four thousand dollars. I do not think I had five thousand dollars.
Q. You think you had four thousand dollars in the house at one time?
A. Yes, sir; for I know that I carried a great deal in the house because I was scolded for it.
Q. Who scolded you?
A. My father.
Q. When you took it out of the house where did you put it?
A. That is the time I bought some of the bonds; sometimes I put in the bank and sometimes I used it for different things that I wanted. I did not keep it all in the house and then use it all at once.
Q. How much of bonds did you buy with that?
A. I do not remember.
Q. Can you not tell whether you bought one thousand of dollars in bonds?
A. Yes, sir: I bought over one thousand dollars of bonds.
Q. You do not know when you bought them?

A. No, sir; I cannot remember that.

Q. Is this the same money that was afterwards in the bank?

A. I put some of that money in the bank.

Q. Was this four thousand dollars the same money that you afterwards put in Mr. De Bow's bank?

620 A. Some of it was the same. I used it for different purposes. I did not send it all to one place. If my brothers would write and tell me that they had a good chance in Washington for me to make some money, I would send money down to them.

Q. Part of this four thousand dollars was part of the money that was subsequently placed in Mr. De Bow's bank, was it?

A. Yes, sir; part of the money.

Q. Do you know how much of it?

A. No, sir; I do not remember.

Q. Where did this money come from that you had—that is, this four thousand dollars which you say you had at home?

A. Money that I had saved from time to time.

Q. You kept saving it up a little at different times?

A. Whenever I happened to have it—if my father gave me money, as he did.

Q. How long were you saving up money in the house until you got this four thousand dollars?

A. I did not save it all until I got four thousand dollars. I was saving all the time.

Q. And keeping it in the house?

A. Except what I paid out and sent to my brothers to invest.

Q. You mean to say that before you came to Washington you had money and you sent some of it on here to Washington?

A. Yes, sir.

Q. And that was put where?

A. In my brothers' bank, where they deposited it as trustees for me, and sometimes invested it.

Q. And the money which you did not send on you kept in
621 the banks of Philadelphia, as you have already stated?

A. Yes, sir; and at home.

Mr. HENKLE: Here are some papers, Mr. Mackey, which Miss McIntire has produced pursuant to call by you. I will now ask her about them.

By Mr. HENKLE:

Q. What is this paper you produce?

A. This is a receipt for sand—of the builders—the bricklayers, I suppose.

Q. In what building was it used?

A. In the buildings on F street.

Q. The Pryor property?

A. Yes, sir; the Pryor property.

Q. Did you pay that bill?

A. My brother paid it for me. I gave him the money and he paid it for me.

Mr. HENKLE: I here give that bill in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 33.)

Q. What is this paper?
A. This is a bill for the concreting.
Q. For the concreting on that property?
A. Yes, sir.
Q. Did you pay that bill?
A. My brother paid it, the same as he paid the others.
Q. And you accounted to him for it?
622 A. Yes, sir.

Mr. HENKLE: I here give this bill in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 34.)

Q. Be kind enough to state what this paper is.
A. This is a sort of release of liens.
Q Signed by whom?
A. By Mr. Haggerty, of Baltimore, Maryland.
Q. Well, did you pay those bills?
A. Yes, sir; they were all paid by me through my brother.

Mr. HENKLE: I here give that paper in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 35.)

Q. What is this paper?
A. This is from the brick company.
Q. For what?
A. Furnishing brick for the houses.
Q. Did you pay that bill?
A. My brother paid it.
Q. Well, did you account to him for it?
A. Yes, sir.

Mr. HENKLE: I here give that paper in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 36.)

623 Mr. MACKEY: It is understood, of course, that I object to these.
Mr. HENKLE: You called for them.
Mr. MACKEY: They are not the papers I called for.
Mr. BOARMAN: We asked for receipts of money which she paid and not for receipts for money which some one else paid.

Q. What is this paper?
A. This is a bill for latrobes and ranges.
Q. Did you pay that bill?
A. I paid it the same as I did the others, through my brother.
Q. And you settled with him for it?
A. Yes, sir.

Mr. HENKLE: I here give this bill in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 37.)

Q. State what the paper is which I now hand you.
A. It is a lumber bill of Church & Stephens.
Q. Did you pay that bill?
A. My brother paid it.
Q. And you accounted to him for it?
A. Yes, sir.

Mr. HENKLE: I here give this paper in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 38.)

624 Q. Please state what the paper is which I now hand you.
A. This is a brick bill, too.
Q. Of whom?
A. Of W. H. West & Brother.
Q. Well, did you settle that bill?
A. Yes, sir; in the same way.

Mr. HENKLE: I here give that bill in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 39.)

Q. Please state what this paper is which I now hand you.
A. This is from the builders.
Q. For what?
A. For part of the work; I do not suppose it is for all.
Q. Well, did you pay this bill?
A. Yes, sir; that was paid in the same way.

Mr. HENKLE: I here give that bill in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 40.)

Q. Please state what the paper is which I now hand you.
A. This is a bricklayer's bill.
Q. Did you pay that?
A. Yes, sir; in the same way.

Mr. HENKLE: I here give that bill in evidence.
(NOTE.—And the same is herewith filed in evidence and
625 marked Exhibit A. H. No. 41.)

Q. When did you pay these several bills that have just been offered in evidence?
A. After the houses were completed, but I do not remember the time; I cannot remember exactly when.
Q. And when you paid your brother he furnished you these receipts?
A. Yes, sir; as he got them from time to time.
Q. And you gave him the money to pay the whole of them?
A. Yes, sir.

Q. Where did you produce these receipts from today?
A. My brother has been keeping them for me ever since this case commenced. I gave him all the papers I had in my house—that is, any papers I found from time to time I gave them to him.
Q. Did you hunt these up and give them to him?
A. Yes, sir.

By Mr. MACKEY:

Q. All these bills you paid through your brother?
A. Yes, sir; through my brother.
Q. How did you give your brother the money to pay for them; in what way—by checks or in cash?
A. In cash.
Q. Where did you get the cash?
A. From money that I kept in the bank.
Q. That is to say, you got it from your sister?
A. Well, she got it out for me, of course; I could not take
626 her book and get it out.
Q. Did you pay these bills one at a time?
A. Whenever they wanted the money for the buildings the money was there ready for them.
Q. Did you draw the check and have your sister draw the money, or did your sister sign the checks?
A. She attended to all that.
Q. I asked you on page 39 in your cross-examination whether you ever bought a house from your brother, Edwin A. McIntire, and you answered, "No, sir." I meant a lot instead of a house. Did you ever buy a lot from your brother, Edwin A. McIntire?
A. No, sir.
Q. You are sure of that, are you?
A. I never bought anything like that from him.

MARTHA McINTIRE.

* * * * * * *

(Adjourned.)

627 APRIL 10, 1893.

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EMMA T. MCINTIRE, who further deposes and says, being recalled:

By Mr. HENKLE:

Q. Miss McIntire, do you desire to make any correction of your testimony in this Pryor case?
A. Yes, sir.
Q. Well, now, will you take this report of your testimony and designate the corrections which you wish to make?
A. On page 578 of the record in the Pryor case Gen. Henkle asked me, in my testimony, this question: "Mr. McIntire suggests to me to ask you whether she had also kept money at home about the house."

Q. That was referring to your sister, Martha McIntire?

A. Yes, sir; and in my answer to that question I said, "Not much." I had reference then to the time since living in Washington, because the question before that reads in this way: "Has she, since you rented that box, continued to keep money with you in the bank with your account?" whereas in Philadelphia she did keep money in the house.

Q. What do you mean by that; that she kept large sums, or what?

628 A. She kept too much money in the house. I remember hearing my father tell her that she kept too much money in the house.

Q. Then, when you made that answer, you were limited to the time since she came to Washington?

A. Yes, sir.

Q. Is there anything further?

A. I think that is all.

Q. I think Mr. Mackey asked you some question further down, your answer to which you wish to correct.

A. Oh, yes. On this same page Mr. Mackey asked me this question: "If she had kept money at home would you have known of it?" and I answered, "Yes, sir; certainly." I meant since she lived in Washington.

Q. But she did keep money in the house when she lived in Philadelphia?

A. Yes, sir.

Cross-examination.

By Mr. MACKEY:

Q. Have you read the testimony of your sister, Martha McIntire?

A. No, sir.

Q. Have you talked to her about her testimony?

A. I heard her mention some things that you asked her.

Q. Did she tell you that she had testified that she had money in Philadelphia?

A. No, sir; I do not know whether she did or not, but I know that she did keep money there.

Q. Did she tell you that she had testified that she kept
629 money in the house in Philadelphia?

A. I do not know whether she told me that or not. She told me several things you asked her.

Q. Did she tell you that she had testified that her father said she kept too much money in the house in Philadelphia?

A. I do not know whether she told me or not. I know that I heard my father say so.

Q. Has she told you anything about her testimony as to keeping money in the house in Philadelphia?

A. Not that I know of.

Q. Now, how do you know she kept money in the house in Philadelphia?

A. Because I lived in the same house. I heard my father tell her that she kept too much money there.

Q. That is the way you know it?

A. Yes, sir.

Q. Did you ever see any of the money yourself?

A. No, sir; I do not think I did.

Q. The only way you know it is by hearing her father tell her that she kept too much money in the house?

A. Yes, sir.

Q. Do you know how much money she kept in the house?

A. No, sir.

Q. Do you know whether it was a large or small amount?

A. Well, I judged it was a large amount because my father told her that she kept too much money in the house.

Q. That is the way you know she had any money in the house—that is, because her father told her that she kept too much

630 money in the house?

A. It was my father who said that, and I believed everything my father said; if he said anything I believed him.

EMMA T. McINTIRE.

* * * * * * *

(Adjourned.)

APRIL 13, 1893.

* * * * * * *

MARTHA MCINTIRE, who deposes and says, being recalled for further cross-examination:

By Mr. MACKEY:

Q. You say that you sold a house and lot for your brother in Philadelphia?

A. I did not say that.

Q. Did you not testify that you made some commissions when you were in Philadelphia by selling a house and lot for your brother, Edwin A. McIntire?

A. Oh, I sold property there for him.

631 Q. What did you get for that property?

A. I do not remember now what I got for it.

Q. You do not remember what the property sold for?

A. No, sir.

Q. Did it run up into several thousand dollars?

A. I cannot remember how much it was sold for.

Q. You do not remember whether it sold for a thousand dollars.

A. Well, it sold for over a thousand dollars.

Q. Or for five thousand dollars?

A. I do not think it was a large enough house to bring five thousand dollars.

Q. Where was the house?

A. It was my brother's house in Philadelphia that I sold for him.

Q. Your brother Edwin A. McIntire?
A. Yes, sir. I was acting as agent for him.
Q. Who got the money for the house?
A. I got the money from the parties up there.
Q. What did you do with that money?
A. I gave it to my brother Henry, who was up there, and he brought it here to my brother Edwin A. McIntire.
Q. You did not put it in bank?
A. No, sir.
Q. When was that sale?
A. I do not remember the date. It was a good while ago; I know that.
Q. Was it in the Centennial year?
632 A. Oh, it was before the Centennial year; it was before 1876.
Q. How long before the Centennial?
A. I guess it was several years before the Centennial.

MARTHA McINTIRE.

* * * * * * *

(Adjourned.)

JUNE 27, 1893.

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Harriet M. Harris.

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Direct examination.

By Mr. HENKLE:

Q. Where do you live?
A. No. 808 H street northwest, in this city.
Q. How long have you lived there?
633 A. Well, I have been here now since, I think, the 14th day of last December this time. I was away nearly eight years from the time I saw this person until I came back. I have been here now, I think—I came here on the 14th or 15th of December last.
Q. You say you lived in Washington before?
A. Yes, sir.
Q. Where have you been living since you left here?
A. In the State of Michigan, and from August until December last in Sioux Falls, South Dakota.
Q. You returned to Washington when?
A. About the 14th or 15th of last December. I could not fix the date positively.
Q. How long did you live in Washington when you were here before?
A. From 1861 to 1882, with the exceptions of a few months when I would be away from the city.
Q. Were you employed in any way?
A. No, sir; I was married and living here.

Q. I want to know——

WITNESS (interposing): I wish to qualify that remark in regard to my doing work. I was doing art-work.

Q. Where was your studio, or where did you do your art-work?

A. Well, now, it is nine hundred and something, I cannot recollect the number. It was in a building with an office in front and my room was in the rear.

Q. Nine hundred and something, what street?

A. F street.

634 Q. In the neighborhood of Mr. McIntire's office?

A. Yes, sir.

Q. How far from Mr. McIntire's office?

A. Well, I cannot say how far.

Q. On the same block?

A. I think it was. I am not positive whether Mr. McIntire's office was on the same block or not. I was, anyhow, very near the corner of 10th and F streets.

Q. On which side of the street?

A. On the south side of the street. Mr. McIntire's office may have been on the same square. It has been so long ago and things have so changed there that I cannot locate the buildings.

Q. Do you know this gentleman here, Mr. Edwin A. McIntire?

A. Yes, sir.

Q. Did you know him when he was in the real-estate business there?

A. Yes, sir.

Q. He had an office near you on F street?

A. Yes, sir.

Q. Were you ever in his office?

A. Yes, sir.

Q. Quite frequently?

A. Yes, sir.

Q. I want to ask you if along about that time you met a lady by the name of Emma Taylor.

A. Yes, sir.

Q. Where did you meet her?

635 A. At Miss Forsyth's dining-rooms on F street.

Q. Between what streets were those dining-rooms?

A. Between 8th and 9th, I think.

Q. On F street?

A. On F street.

Q. Did you take your meals there?

A. I did.

Q. Did Miss Taylor take her meals there?

A. She did at the times I saw her there; at different times.

Q. How frequently did you meet her there?

A. Well, I met her sometimes once a day, and then sometimes I would not see her for some days; it depended upon whether she was in there when I took my meals. I saw her frequently talking to Miss Forsyth when she was not taking her meals.

Q. Did you ever see her in Mr. McIntire's office?

A. Yes, sir.

Q. How often did you see her there?

A. I have no recollection of seeing her there but once.

Q. Is your recollection distinct about that occasion?

A. Yes, sir; because I had stopped in there to see Mr. McIntire concerning a house, and I was on my way from Prof. Gillan's studio, where I was taking my lessons, and had a picture with me. On that occasion I saw this lady there. There was another lady there whom I did not know, but this other lady was the only other person in there excepting Miss Taylor.

Q. You are quite distinct in your recollection of seeing Miss Taylor there on that occasion?

A. Yes, sir.

636 Q. How old a lady was she?

A. Well, somewhere in the neighborhood of between twenty-five and perhaps thirty years of age.

Q. Do you know what she was doing in Mr. McIntire's office at that time?

A. No, sir; I do not.

Q. Did you know Mr. McIntire's sister, Miss Emma T. McIntire?

A. No, sir.

Q. You never saw her to know her?

A. No, sir; not at that time. If I saw the lady then, I did not know who she was.

Q. Would you know her now?

A. I would know the lady that I have since been told is Mr. McIntire's sister.

Q. You mean Miss Emma T. McIntire?

A. Yes, sir.

Q. Would you have confounded her with Miss Taylor?

A. No, sir; she is a different-sized woman; such a decided difference that no one could be mistaken in the two.

Q. How did you come to let Mr. McIntire know that you have seen Emma Taylor at his office?

A. I went into Mr. McIntire's office to inquire for Mr. Craile's address.

Q. Since you returned here?

A. Yes, sir; and he wanted to know if I was not Miss Wilcox, who used to be here at that time——

Mr. MACKEY (interposing): I object to the witness testifying to any conversations between her and Mr. McIntire.

637 WITNESS: I was a widow at that time. I told him that I was. He then asked me if I had any recollection of Miss Taylor that I used to know at Miss Forsyth's dining-rooms—that is, if I had any recollection of a woman named Miss or Mrs. Taylor, whichever it may be, and I told him that I had. He wanted to know under what circumstances I met her at Miss Forsyth's dining-rooms and asked me if I could describe her. I told him that I could not describe her particularly, but that I had a general outline

of the lady in my mind. That is all the conversation I had with him at that time.

Q. Had you met Mr. McIntire since you left here in 1882?

A. No, sir.

Cross-examination.

By Mr. MACKEY:

Q. You lived here from 1861 to 1882?

A. Yes, sir.

Q. What time in 1882 did you leave here?

A. I left here on the third day of April, 1882.

Q. Where did you go to?

A. Detroit, Michigan.

Q. And you lived there ever since?

A. Within sixty (60) miles of there.

Q. When you were here you say you were in the art business?

A. Yes, sir.

Q. Did you keep house?

A. Not all the time; some of the time I did, but at the time that I am speaking of, when I saw Miss Taylor, I was not keeping house.

638 Q. Were you married then?

A. No, sir; I was a widow.

Q. What was your name then?

A. Wilcox.

Q. Mrs. Wilcox?

A. Yes, sir.

Q. You took your meals, you say, at Miss Forsyth's?

A. Yes, sir.

Q. Has she a restaurant there yet?

A. No, sir; not that I know of.

Q. Do you know what has become of Miss Forsyth?

A. I do not know.

Q. Do you know whether she is living or not?

A. I could not say.

Q. How long did you take your meals there?

A. For a number of months, off and on.

Q. How long before you left Washington was it that you were taking your meals at Miss Forsyth's?

A. For a year or more.

Q. Then you did not take your meals at Miss Forsyth's in the year 1882?

A. No, sir.

Q. Nor in the latter part of 1881?

A. Well, I cannot just fix exactly when I quit taking my meals there; I was not taking my meals there in the year 1882; that I am positive of.

Q. You say that at least a year before you left here you ceased to take your meals at Miss Forsyth's?

639 A. Yes, sir.

Q. So, then, of course, from April, 1881, to April, 1882, you did not take your meals at Miss Forsyth's? Is that correct?

A. Yes, sir; as near as I can remember.

Q. Was it a year and a half?

A. No, sir; it was not a year and a half. I gauged the time mostly from the time I took charge of a residence for a gentleman and engaged for a year with him, and at the end of the year I left him. I gauged my time mostly from that. As to the dates I could not tell exactly.

Q. How did you come to know this lady—this Emma Taylor?

A. By hearing of her spoken of, hearing her name called, and seeing her in company with Miss Forsyth. Personally, I never spoke to her and had no acquaintance with her. I simply saw her in the dining-room, heard her spoken to as Miss Taylor, and that she was a very intimate friend of Miss Forsyth's.

Q. Was her first name mentioned at all?

A. I could not say. I heard her spoken of as Miss Taylor.

Q. You do not know whether her name was Emma Taylor or not?

A. No, sir; I could not say.

Q. It might have been Jane Taylor, for aught you know?

A. Yes, sir; as to her first name I could not say.

Q. When did you see this lady in Mr. McIntire's office?

A. Well, as near as I can remember, it must have been in 1880. It certainly was in the year before I left here. It was during the year that I was boarding at Miss Forsyth's. I cannot fix the month. I think probably it was in December, about the time that I was taking lessons from Prof. Gillan. I could not possibly tell the month.

640 Q. How often did you meet her in the restaurant?

A. Sometimes every day, and sometimes not for a day or two.

Q. What time did she take her meals there?

A. I presume like the rest of us, morning, noon, or evening; any time.

Q. She had no regular time for taking her meals?

A. No, sir.

Q. She would just come in there at any time?

A. Yes, sir.

Q. You have seen her there in the mornings?

A. Yes, sir.

Q. And at noon?

A. Yes; at different times, whenever I was in at my meals.

Q. When you met her at Mr. McIntire's office what was she doing?

A. I could not say that she was doing anything there.

Q. Well, was she sitting down or standing up?

A. Sitting down.

Q. Was she in front of the office or in the back part?

A. I think she was in the front office. I do not think I was in the back office.

Q. Did you hear her speak to Mr. McIntire?

A. No, sir; no conversation passed between them while I was there.

Q. What sort of a looking woman was she?

A. She was a woman larger than I am, with dark complexion.

Q. Well, of course, the court will not have you before it. Do you know how tall you are?

641–645 A. Well, I judge she was a woman, maybe, five feet four or five inches tall.

Q. You are about that height.

A. I am about five feet three or four inches. I think she was a woman taller than I am.

Q. Was she stout?

A. She was rather large, more so than small.

Q. What was the color of her hair?

A. Dark, with rather rough, coarse skin; as I remember her, she had a kind of coarse and dark complexion.

Q. Did you ever hear where she was employed or whether she had any employment?

A. No, sir.

Q. You never spoke to her in your life?

A. No, sir.

Q. You never saw her in Mr. McIntire's office but once?

A. That is all.

Q. Are you sure she was as old as twenty-five years?

A. Oh, yes, sir.

Q. Was she twenty-six years of age?

A. Well, that I could not say. I am not much of a judge of ages, especially of women.

Q. At all events, she was between twenty-five and thirty years of age?

A. Yes, sir; she was certainly twenty-five, anyway.

Q. Was she less than thirty years of age?

A. Yes, sir; I judge she was between 25 and 30 years of age.

HARRIET M. HARRIS.

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646 *Testimony for Complainants in Rebuttal.*

SECOND NATIONAL BANK OF WASHINGTON, D. C., *August* 2, 1893.

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John C. Eckloff.

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Direct examination.

By Mr. MACKEY:

Q. You, I believe, are the cashier of the Second National bank of this city?

A. Yes, sir.

Q. You have been served with a *subpœna duces tecum*, have you

not, to produce the accounts of Emma T. McIntire from 1882, or from its beginning, until a late date—I forget the date——

A. (Interposing.) I was served with a subpœna to produce the books of the bank containing the account of Emma T. McIntire from its beginning to the first of January, 1887.

Q. Have you that account here?

A. Here are the books containing the account.

Q. Will you please turn to the account of Emma T. McIntire and state when it began?

647 Mr. HENKLE: I object to Mr. Eckloff producing the account of all. I say that he has no right to do it unless ordered by the court.

Mr. MACKEY: The court had ordered it.

Mr. HENKLE: When?

Mr. MACKEY: By a *subpœna duces tecum*.

Mr. HENKLE: I do not think it is customary for a bank to voluntarily disclose the account of a customer.

WITNESS: It is not unless ordered by the court.

Mr. HENKLE: There has been no order of the court.

WITNESS: I have a subpœna to produce books and checks pertaining to the account of Emma T. McIntire before the examiner.

Mr. HENKLE: Miss Emma T. McIntire is not a party to this suit and you have no right, Mr. Mackey, to go into her account without having obtained an order of the court for that purpose. I object to the production of these books and insist that it ought not to be done. You have obtained an order, Mr. Mackey, if there is any order at all, without any notice to me.

Mr. MACKEY: Because you were not entitled to notice. We do not get a *subpœna duces tecum* on notice to the other side.

WITNESS: Here is what I presume is a typewritten copy served on me of the subpœna which you gentlemen, I suppose, are talking about; which copy of subpœna is as follows:

648 In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
E. A. MCINTIRE *et al.* } No. 12761, Eq. Doc. 31.

The President of the United States to John C. Eckloff:

You are hereby commanded to appear as a witness for the complainant before Albert Harper, examiner, on the 2nd day of August, A. D. 1893, at 3.30 o'clock p. m., and bring with you the books of the Second National bank containing the deposit and check account of Emma T. McIntire from its beginning to January 1st, 1887; also such checks drawn by her on said bank as may be in your possession or control; and not depart without leave.

Witness E. F. Bingham, chief justice.

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clk.*

649 Mr. MACKEY: Will you, Mr. Eckloff, now turn to that account?

Mr. HENKLE: I object to Mr. Eckloff doing so until the court has ordered it.

Mr. MACKEY: The question right here is whether Mr. Eckloff is to obey the order of the court or the order of Mr. Henkle. I call upon the examiner to instruct Mr. Eckloff what his duty is under the circumstances where objection is made by counsel. I understand the rule to be this: that when a witness is put upon the stand and counsel on the other side objects, the objection is, according to the rule governing examiners in the taking of testimony—the number of which rule I forget—entered upon the record, and thereupon the witness answers the question, the objection of the counsel for the opposite side being in this way saved; but I do not understand it to be the rule that when an objection is made to the taking of testimony counsel can instruct the witness not to answer, the witness not being a party to the suit and being in no way represented by Mr. Henkle, nor, indeed, is Emma T. McIntire represented by Mr. Henkle.

Mr. HENKLE: I say to the examiner that my understanding is that Mr. Mackey has no right to examine the book account of Emma T. McIntire, who is not a party to this suit, except upon the order of the court, and that such order of the court should be obtained after notice either to Emma T. McIntire or to counsel on the opposite side in this case; and I ask the examiner to certify the question to the court. I claim that this order is simply a *subpœna*
650 *duces tecum*, which was obtained without any notice to me and of the application for which I was entitled to notice.

Mr. MACKEY: I have no objection to the question being certified to the court, but I desire to state here that, inasmuch as no one knows better than counsel himself that an order for a *subpœna duces tecum* is not such an order as required notice to the opposite counsel—which would defeat the very object of the subpœna—I shall ask the court to place upon the defeated party in this motion the reasonable costs of the motion, and because I consider it a trifling one, made for purposes of delay.

Mr. HENKLE: My objection and motion are made in good faith and in the interest of what is fair and right. It seems to me that it is all wrong that the private account of a person who happens to be a witness in a case should be examined without notice to the witness and without the consent of the witness or that of the bank, which is against the rule and usages of all banks, and I say that, in my judgment, it ought not to be done except upon the order of the court, made after notice to the adverse counsel.

Mr. MACKEY: When the witness refuses to answer the question, then the question can be certified to the court. It is for the witness to use his own judgment.

WITNESS: I am in this position: This paper which I have handed to the examiner was served upon me from the court to produce those books. It was a physical impossibility for me to produce

those books in the court-house, and Mr. Mackey proposed to
651 come around here in the bank and examine me and the books before the examiner here; but if there is any question about my right to produce these books and be examined about them, I prefer to consult Mr. Mattingly, the attorney of the bank, before proceeding further.

Mr. HENKLE: I will be glad to have you do so.

Mr. MACKEY: I have no objection to that course being pursued.

NOTE.—Whereupon the witness stated that he would go to the law office of Mr. Mattingly and obtain his advice in this matter, and thereupon the witness returned and made the following statement:

Mr. Henkle, the attorney for one of the parties, claiming that the books of the bank are not properly admissible in evidence, and that the order for the *subpœna duces* — was obtained *ex parte*, without notice to him, not desiring to improperly expose the account of a depositor of the bank, and being informed by the examiner that the only way in which the question can be decided by the court is by refusing to answer, I therefore, without any intention to disobey the subpœna or to manifeast any want of respect for the court, decline to produce the books showing the account of Emma T. McIntire.

NOTE.—The question is accordingly, this 2nd day of August, 1893, certified to the court.

JOHN C. ECKLOFF.

Subscribed and sworn to before me this 2nd day of August, 1895.
ALBERT HARPER, *Examiner.*

652 *Opinion of Court.*

(By Mr. Justice BRADLEY, holding a special term in equity:)

This matter certified to the court, being the refusal of the witness John C. Eckloff, the cashier of the Second National bank, to produce the books showing the account of Emma T. McIntire or any checks which might be in the custody of that bank, drawn upon that account, until the court should determine the question whether or not that should be done, has been duly considered, and the court has come to the conclusion to overrule the application upon the following grounds, with others:

First. That the complainant, by the bill, as an element of the case, assumes the burden of establishing the fact that the defendant Martha McIntire was a person without means and without the pecuniary ability to make the purchase assailed; and, assuming that burden by the bill, the complainant has recognized it in the taking of the proof by evidence such as she saw fit to produce, tending to show that Martha McIntire was a woman without means. Having gone into that element of the case as part of the case-in-chief, the complainant has no right to make a distinct element of proof in rebuttal upon that point. She exhausted her case by going into it in chief, except so far as it may be necessary to deny or disprove affirmatively matter set up by the defendants.

Second. The defendant Martha McIntire did not in her deposition anywhere undertake to say that the money which was used in making this purchase was deposited to the account of her sister in the Second National bank, nor that the amount which
653 was so used was taken from that account, nor did she undertake to say where that fund was obtained. She testified that she had resources in several directions, one of them being moneys which she from time to time placed in the hands of her sister, Emma T. McIntire, and which it was her sister's duty to deposit to her own account in the Second National bank. It is true that the defendant Martha McIntire says that moneys were taken from that account *form* time to time at her instance by her sister and turned over to her brother for use in her behalf. The witness Emma T. McIntire, who is not a party to the suit and whose account is sought to be investigated as an item of evidence, corrob-ates the defendant Martha McIntire in the statement that moneys were turned over to her (Emma T. McIntire) from time to time, and that she deposited them to her account in the Second National bank. She (Emma T. McIntire) says that from time to time, at the instance of her sister (Martha McIntire), portions of this fund were drawn and given to her brother for investment. Emma T. McIntire does not undertake to say that the twenty-five hundred dollars in controversy was taken by her from that account. She does say that she has known sums of five hundred dollars and one thousand dollars *ot* two thousand dollars to be taken from that account for the benefit of her sister, Martha McIntire. This is all developed upon cross-examination. The complainant has no right, by reason of these collateral statements that various sums of money were taken from that account from time to time, to undertake to impeach the witness Emma T. McIntire by disproving those statements. Had these witnesses, the defendant Martha McIntire and her sister Emma, both stated
654 that this sum of twenty-five hundred dollars was taken from the bank account for the purpose of being applied to this purchase it might present a different question.

Third. According to the testimony of both the defendant Martha McIntire and her sister, Emma T. McIntire, this bank account in the Second National bank was exclusively the bank account of the depositor, Emma T. McIntire, so far as the bank was concerned. The defendant Martha McIntire had no interest in that account itself, no right to check against, and no control over it. The depositor, Emma T. McIntire, was simply the depositary of her sister, Martha McIntire. She was her agent. The statement, therefore, of the bank account between the Second National bank and its depositor, Emma T. McIntire, so far as the right of the defendant Martha McIntire are concerned, I do not consider competent evidence as *res inter alios acta*.

A. C. BRADLEY, *Justice.*

655 AUGUST 3, 1893.

* * * * * * *

MARY C. PRYOR, who, being recalled and resworn as a witness on behalf of herself, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. In your testimony given in your case, you testified that you saw this auction sale of your property from the window?

A. Yes, sir.

Q. I want to ask you what window you alluded to at that time.

A. There was an office there on the coal yard right as you go into the gate—right on the same lot—and I was in there at the little window.

Q. This little shanty or office was one story high, with one window and one door to it?

A. Yes, sir.

Q. And you were standing in the office and looking out of the window and saw the sale going on?

A. Yes, sir.

Q. After this sale took place were any repairs made to the fence or to that shanty before they were torn down and the build-

656 ings which are now on the lot put up?

A. No, sir; there was nothing done at all until they were torn down. It was rented.

Q. No fence repaired?

A. No, sir; not until they built there.

Q. No repairs of any sort made to the shanty or fence?

A. No, sir.

Q. After you left the property who went into it?

A. A man by the name of Mack.

Q. He remained there until when?

A. Until they gave him notice to move—that they were going to build.

Q. How long had he been there then?

A. He was there two winters. He came there in the fall or in the spring, and he was there two winters and the coming spring.

Q. How long before they commenced to build was it that he moved out; was it a month or two months, or how long?

A. About a month.

Q. What was his business there?

A. He sold wood.

Q. It has been alleged that you and your husband made a deed conveying this property to Miss Martha McIntire, and a deed, apparently with your signature, has been offered in evidence here; I want to ask you whether you ever at any time made a deed of that property to Martha McIntire.

A. I never seen her in my life; I do not know her, and I never did know her in any way.

657 Q. But did you make any deed to her?
A. No, sir; never in my life to any effect.

Cross-examination.

By Mr. HENKLE:

Q. Where was your house in which you lived at that time?
A. In the same place.
Q. I know. Was it on the alley?
A. Yes, sir; right in the lot where he built, where he sold; right on the same ground where I was.

Mr. BOARMAN: She does not understand the question.

Q. I mean your dwelling-house.

Mr. MACKEY: The dwelling-house was on the alley.
NOTE.—No answer to last question.

Q. How far back was that from where the auction was going on?
A. I suppose ten feet—I judge so.
Q. Your house went ten feet back from where the auction was going on?
A. The dwelling-house was ten feet back.
Mr. BOARMAN: Back of what?
WITNESS: Back of where the front of that was. I do not know whether it was ten or five feet back of the lot where he built on; across the alley, right across the alley.
Q Your house was across the alley from that sale?
658 A. Yes, sir.
Q. How wide was that alley?
A. I do not know.
Q. Fifteen feet wide?
A. I do not know whether it was fifteen or twenty feet.
Q. Was your house right across the alley?
A. My dwelling-house is right across the alley, but this office where I set was right on the same lot inside; it come inside of the lot.
Q. Now, Mrs. Pryor, was there not right across the alley an old house which has now tumbled down?
A. Yes, sir; but I did not live in that.
Q. Your house was thirty feet away from that, was it not?
A. I do not know whether it was that many feet or not.
Q. How many houses between your house and that?
A. About one.
Q. Only one?
A. Yes, sir.
Q. Between your house and the house now tumbling down?
A. Yes; one house.
Q. Any vacant ground?
A. Mr. Johnson's, I think, was vacant at that time; his wood-shed was not up then.

Q. Then, there was considerable space between your house and the house now tumbling down?

A. Yes, sir.

Q. As much as thirty or forty feet?

A. I could not say.

659 Q. Well, a space for two houses?

A. Yes, sir.

Q. Where was the shed in which you say you were?

A. Well, this lot we are fighting about now—this shed was right on it, inside of the fence where they fastened the gate; inside, near to the front.

Q. How near to the front?

A. It was nearer to the window than to the alley, because there was a door there to get into the yard and to come in, and the window was fronting the front gate.

Q. When you were examined before you testified that you were in your house, at the front window, and could see.

A. Well, that was the front window. You did not ask me particularly what house.

Q. You say you were in your house across the alley?

A. No, sir; I was in the office.

Q. I will read from your testimony heretofore given by you, at page 10, as follows: "I was in my house, at the front window, and could see. It was just across the alley, and they had not built there then." Is that what you swore to before?

A. Yes, sir.

Q. Is that true or not?

A. It is not true about my being in my house. I might not have put it in the right place, but it was in the office, right on the same place.

Q. You swore before that you were in your house, at the front window, and could see the sale, and that it was just across the alley. Now you say that the place you were in was not across the alley?

A. Yes, sir; it is across the alley.

660 Q. Which—the shanty?

A. Yes, sir; Mr. McIntire put two small bricks right on the alley and has them rented there now.

Q. You say this shed was across the alley from where the sale was going on?

A. No, sir; I did not say that. The sale was in front of me. I was on the same lot and it run back. I came in on the back way, and you all were in front.

Q. This shed was not across the alley from where the sale was going on?

A. You must call it alley and lot both. It is all right there.

Q. There was no house there then?

A. No, sir.

Q. Was it across the alley or not?

A. The back part of the alley was on the edge of the lot, like the front of the house now, with an opening right inside of the yard.

Q. Was this shed across the alley or not from where the sale was going on?

A. Well, I was at the alleyway and you all were in front.

Q. I ask you whether this shed where you say you were was across the alley from where the sale was going on or not.

A. Yes, sir.

Mr. MACKEY: Did you understand that?

WITNESS: I do not understand it.

661 Mr. MACKEY: Was the shed across the alley from where the sale was going on, or was the shed between the alley and where the sale was going on?

A. Yes, sir; it was between.

Mr. HENKLE: Hold on, Mr. Mackey; I am cross-examining this witness.

Q. Now, I want to understand whether that shanty or shed was on the same side of the alley where they were selling the property.

A. Yes, sir; on the same side.

Q. Then it was not across the alley?

A. No, sir.

Q. It was on the same side of the lot where they were selling the property and about how far from it?

A. I do not know; it was more to the end of the alley than to the front.

Q. You were standing at the window of this shed?

A. Yes, sir.

Q. Now, when you were examined as a witness before you testified that you were in your house, at the front window, and could see the sale, and you say it was just across the alley. What did you mean by that?

A. Well, the shanty. I thought I called that across the alley—the office of the coal yard.

Mr. BOARMAN: Across the alley from what?

Mr. HENKLE: Hold on, gentlemen; let me examine this witness.

662 Q. Now, Mrs. Pryor, you say that shed where you were was on the same side of the alley where they were selling the property?

A. No, sir; they were front and we were back; the shed ran back.

Q. Was it on the same side of the alley or across the alley?

A. It was across.

Q. The shed was across on the other side of the alley?

A. No, sir; it was right on the line of the alley and the lot was just as you see the brick houses built there now.

Q. On the same side?

A. Yes, sir.

Q. Not across the alley?

A. No, sir.

Q. What did you mean when you swore before that you were at the front window of your house, which was across the alley?

A. I said that I was at the window, but I did not say which window.

Q. (Reading:) "I was in my house, at the front window, and could see; it was just across the alley, and they had not built there then." How is that?

A. Well, we could see even from our front window at that time.

Q. Were you at the front window of your house?

A. I was in the office at the first part of the sale and afterwards I went over home.

Q. What did you mean by that testimony which you gave before?

A. I do not know anything about it.

663 Mr. MACKEY: I object to the question because the witness has testified two or three times what she meant by it. She has said that the shed was across the alley.

Mr. HENKLE: I desire the examiner to note upon the record that Mr. Mackey is constantly interposing to explain and make answers for the witness.

Q. What did you mean when you testified before that you were at your front window in your house, which was just across the alley?

A. I said at the window; it was the office window. I guess I was speaking to the best of my understanding.

Q. You swore before that you were at your front window in your house?

A. We call that a house.

Q. Did you call that your house?

A. Yes, sir.

Q. Was that what you meant when you swore to this before?

A. It must have been.

Q. Was that across the alley?

A. I think it was called across the alley from where the sale was. I called it that because there front and I was back; they were in front of me and I was on the back end of the alley.

Q. You have sworn two or three times that it was on the same side of the alley.

A. Well, I do not know. When the auctioneer was in front of me I was on the back end of the lot, and that is the reason I said it was back.

664 Q. You have been asked if you ever made a deed to Martha McIntire and you say you did not?

A. Yes; I do.

Q. When you were on the stand before, this deed, which I now hand you (Exhibit A. H. No. 3 in Pryor *vs.* McIntire), was shown you and you were asked if that was your signature?

Mr. MACKEY: I object to the question for the reason that there is not proof that this paper was handed to her at the former examination when she was on the stand.

A. That was wrote with purple ink and this is black ink.

Q. I ask you now to look at that deed again (Exhibit A. H. No. 3) and say where that signature is yours or not.

A. I do not know.

Q. You do not know whether it is or not?

A. No, sir.

Q. Do you swear it is not?

A. I do not know. I never made any deed to anybody.

Q. Is that your name?

A. That is my name.

Q. Did you write it or not?

A. I do not know.

Q. Will you swear that you did not write it?

A. I do not know. I would like to hear it read before I answer.

Q. Never mind about its being read. Will you swear that you did not write that signature there?

A. I never wrote it for any deed.

665 Q. Will you swear that you did not write that signature?

A. No; not for any deed at all to anybody. I never made any deed since the Lord put me on earth to anybody. I never went before any squire to make a deed to anybody since I have been born.

Q. Now, Mrs. Pryor, the testimony shows that this paper (Exhibit A. H. No. 3) was handed to you before when on the stand and you were asked if that was your signature. I will read from your testimony, as follows, "I want to know whether that is your signature or not," and you answered, "I suppose I wrote it, but I do not know positively whether I wrote it or not." How is that?

A. I told you, I believe, here before that I never made any deed to Martha McIntire in my life and never received any money from him.

Q. Now, again, on page 17, the record reads, "Look at that and say whether that is your signature or not"——

Mr. MACKEY (interposing): I object to this testimony because there is no proof whatever that this is the same paper which was shown the witness at that time.

Mr. HENKLE: We will supply that if necessary.

Q. (Continuing:) You say further, Mrs. Pryor, in your former testimony, "I remember nothing of these papers. I do not remember this"——

A. (Interposing.) Not about any deed.

Q. (Continuing:) The record further reads as follows: "Is that your signature?" To which you answered, "It may be."

666 Then you say, further along, that you cannot say whether it is or not. What is your explanation of that?

A. I say that I never acknowledged making any deed over to any Martha McIntire or receiving any money from her, never in my life; no acknowledgment of any in any way or anyhow, and it never was mentioned.

Mr. MACKEY: I want it to go on record here that we deny as emphatically as we can that we signed that deed. It is an altered paper.

Mr. HENKLE: What do you mean by that?

Mr. MACKEY: We are speaking for our client.

Mr. HENKLE: You mean she denies it.

Mr. MACKEY: Yes—that is, that she never signed any deed to Martha McIntire.

Q. Did you ever make a deed to anybody?

A. Never since I was born. I have done a good deal of business with different gentlemen and I always own up to what is right.

Q. You never signed a deed?

A. No, sir.

Q. Did you sign a deed of trust?

WITNESS: To what?

Mr. MACKEY: This is not responsive to anything brought out in the direct examination and is going into the case afresh.

667 This witness has answered all these questions before.

WITNESS: Who made that deed of trust?

Q. I now show you this paper (Exhibit A. H. No. 2 in Pryor *vs.* McIntire), which is the deed of trust to Brainard H. Warner and Henry McIntire, bearing date May 2, 1876——

Mr. MACKEY (interposing): I insist upon counsel explaining to the witness what it is for.

Q. (Continuing:) Which is to secure the sum of five hundred dollars on money loaned and advanced——

Mr. MACKEY (interposing): To whom?

Q. (Continuing:) To George E. Emmons, and payable to his order——

Mr. MACKEY (interposing): Is that the deed to secure Hartwell Jenison which you are producing?

Mr. MCINTIRE: No.

Q. (Continuing:) I hand you that paper——

WITNESS (interposing): Has that Squire Mills' name on it and Mr. Warner's name on it? That is the only deed of trust I know anything about.

Mr. HENKLE: Yes.

Q. Is that your signature to that deed of trust?

A. That is the only one I made.

668 Q. Is that your signature?

A. My name must be there.

Q. Look at it and say whether that is your signature or not.

A. That is Mary C. Pryor.

Q. Is it your signature?

A. Well, I guess it is.

Q. Is there any doubt about it?

A. There is not doubt about the deed I made before Squire Mills.

Q. You did make that deed?

A. I signed my name. I did not acknowledge anything else.

Q. Now, I will show you another deed (Exhibit A. H. No. 4 in Pryor *vs.* McIntire), which purports to be a deed of trust from you and your husband to Edwin A. McIntire, trustee, to secure H. Jenison in the sum of four hundred and fifty dollars. Is that your signature?

A. No, sir; I never had anything to do with that.

Q. Do you say that is not your signature and you never made the deed?

A. No, sir; I never made it.

Q. When you were on the stand before you were asked whether that was your signature and you answered, "It may be mine." How is that?

A. Not to no deed, because I never made any.

Q. You just admitted that you made a deed of trust.

A. I did not mean to Mr. Jenison or Mr. McIntire—never since I was born.

Q. Have you any additional information that you did not
669 have before?

A. I always said that I did not make any deed to Jenison or to Martha McIntire.

Q. Have you any information that you did not have before?

WITNESS: What do you mean?

Mr. HENKLE: Do you know anything about it which you did not know before is what I mean.

A. Every time I come here I learn that I did not know at all.

Q. You learned it from Mr. Mackey?

A. It seems to me that when I come here you are always here, and I do not get the facts.

Redirect examination.

By Mr. MACKEY:

Q. You and your husband borrowed on your house five hundred dollars, and you gave a deed of trust to secure that?

A. Yes, sir.

Q. And afterwards you paid fifty dollars on that five hundred dollars. Do you remember that?

A. Yes, sir.

Mr. HENKLE: I object to these questions as leading.

Q. And the deed of trust was executed and acknowledged by you?

A. Yes, sir.

Q. And Mr. Hartwell Jenison was the man who loaned
670 you the money?

A. I learned he was the man.

Q. From whom?

A. Mr. McIntire told me that Mr. Hartwell Jenison had bought it, but that he did not want it, as it was a dilapidated place and did

not receive anything for it, and that he was not at the sale when it was sold.

Q. Let me see if we cannot be a little fairer with you than Gen. Henkle was. You say in your former testimony, "I was in my house, at the front window, and could see. It was just across the alley, and they had not built there then." Do you mean that these houses which are there now on that lot were not there then?

A. He had not built on the lot; and Mr. Johnson's lot—I do not really think—if he had built, he had not put up his back shed at that time; it was all open, and you could see through.

Q. Do you mean that where you were then standing, looking at the sale, they have built a house?

A. Yes, sir; since then.

MARY C. PRYOR.

* * * * * * *

(Adjourned to —.)

671 AUGUST 5, 1893.

* * * * * * *

Mr. F. H. MACKEY, who, as one of the solicitors for the complainant, here gives in evidence certified copies from the office of the recorder of deeds in and for the District of Columbia of the following deeds, to wit:

Deed from E. A. McIntire to Martha McIntire, dated December 18, 1879, and recorded August 29, 1893, in Liber 1052, folio 489.

Deed from Edwin A. McIntire, trustee, to Emma Taylor, dated April 1, 1881, and recorded April 28, 1881, in Liber 967, folio 180.

Deed from G. W. F. Swartzell to Emma Taylor, dated January 12, 1882, and recorded January 20, 1882, in Liber 992, folio 273.

Deed from Margaret Eller *et vir* to Emma Taylor, dated January 11, 1882, and recorded April 19, 1882, in Liber 1003, folio 149.

Deed from H. Jenison *et ux.* to Emma Taylor, dated April 19, 1882, and recorded April 21, 1882, in Liber 1003, folio 188.

Deed from Willis Herndon *et ux.* to Emma Taylor, dated May 4, 1883, and recorded June 26, 1883, in Liber 1009, folio 271.

Deed from Edwin A. McIntire, trustee, to Emma Taylor, dated June 10, 1882, and recorded June 26, 1882, in Liber 1009, folio 273.

Deed from William E. McIntire to Emma Taylor, dated
672 December 2, 1882, and recorded December 2, 1882, in Liber 1019, folio 391.

Deed from Edwin A. McIntire, trustee, to Emma Taylor, dated August 28, 1882, and recorded May 16, 1883, in Liber 1043, folio 3.

(NOTE.—And the same are herewith filed in evidence and marked respectively Nos. 42 to 50, both inclusive.)

Mr. HENKLE: What is the object of the offer of this deed from Herndon to Taylor, being Exhibit A. H. No. 46?

Mr. MACKEY: The object of the offer of that deed is to show that the original deed was obtained by Mr. Edwin A. McIntire from the office of the recorder of deeds after it had been recorded.

Mr. HENKLE: Do I understand you to mean that it is introduced simply for the purpose of showing the marginal note?

Mr. MACKEY: That is all. It is offered to show the fact that the original of that deed was taken from the office of the recorder of deeds by Edwin A. McIntire.

Mr. HENKLE: The deed itself is not offered in evidence, but simply this marginal note?

Mr. MACKEY: To show that circumstance. That is all. That is the property which Mr. Joseph Forrest, a witness in this case, is alleged to have purchased from Emma Taylor.

673 Mr. HENKLE: I object to this deed (Exhibit A. H. No. 46) because it relates to matters that are not involved in this Pryor suit or in either of these cases, and has nothing whatever to do with either of these cases, and it is utterly immaterial as to whom the deed was delivered, and I object to this marginal entry for that reason, that it has nothing to do with the case and is immaterial and irrelevant.

I object to the deed from William E. McIntire to Emma Taylor (Exhibit A. H. No. 48) for the reason that it does not relate to any property in controversy in this case or in either of these cases and has nothing to do with any of them and is immaterial and irrelevant to the issue, and the same objection is made to the marginal entry as to the delivery of the deed.

Mr. MACKEY: I will state again for the information of counsel that these certified copies of deeds are offered in evidence simply for the purpose of showing that the original deeds of conveyance to Emma Taylor were taken from the office of the recorder of deeds by Edwin A. McIntire after they were recorded, and they are offered as a circumstance tending to maintain the issues joined in this and the other cases.

Mr. HENKLE: I object to the offers of all these deeds upon the ground that *that* there is no evidence that these marginal notes are by law a matter of record; that they are not part of the records of the deeds and have no warrant or authority in law, and are incompetent, irregular, and immaterial and do not tend to prove the fact stated, and all of the deeds are objected to as being irrelevant and immaterial to any matter involved in this and the other cases.

674 And thereupon ALLAN E. WILSON—

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. What is your occupation?

A. I am a clerk in the office of the recorder of deeds in and for the District of Columbia.

Q. Are you familiar with the practice of that office in respect of the delivery of deeds to parties after they have been recorded?

A. I am.

Q. How long have you been employed in that office?

A. Since the 8th of November, 1889.

Q. And you know what the practice of the office is now and what it has been in respect of the delivery of deeds?

A. Yes, sir.

Q. When a deed is left for record you may state what the practice is in respect to giving a receipt, if any is given, for that deed.

A. When a deed is left for record the clerk who received it makes out a slip or receipt which on the top recites, "Bring this back one month after date for delivery of deed."

Q. And that is a receipt for the deed?

A. Yes, sir.

Q. Now, after the deed has been recorded you may state what the practice is in respect of making any entry and where as to the return of the deed.

675 A. When the receipt comes back we ask the name of the party to whom it is going or the name of the party who brings the receipt. If it is to the grantee, we mark it off to the grantee; if it is for a firm, we ask the name of the firm and mark it off to the firm; if trustees and the trustees are a firm, we mark it off to the trustees; if the deed is not for the party who brings the receipt, the party is asked to whom the deed is going or who sends for it, and then we mark off the name of the party to whom it goes.

Q. You mark it off where?

A. We mark it off on the receipt first, and then we go to the record according to the liber and folio on the receipt and mark off on the margin of the deed copied there to whom the original is delivered.

Q. I see, for instance, on this certified copy of deed from Edwin A. McIntire, trustee, to Emma Taylor (Exhibit A. H. No. —), on the margin thereof, this: "Del'd to E. A. McIntire, July 2, 1881, R. R." That means what?

A. That means that the original deed was delivered to E. A. McIntire on July 2, 1881, and the receipt returned.

Q. That is, the party to whom the original deed is delivered returns the receipt that was given when the deed was left at the office for record?

A. Yes, sir; or sent for it.

Q. What do you find on each of these deeds—that is, on the margin thereof?

A. On this copy of deed from McIntire to Taylor (Exhibit A. H. No. 42) I find on the margin, "Del'd to E. A. McIntire, July 2, 1881, R. R." I find on the copy of deed from Swartzell to Taylor (Exhibit A. H. No. 43) this: "Del'd to E. A. McIntire, Feb'y

676 21, 1882, R. R." I find on the copy of deed from Eller to Taylor (Exhibit A. H. No. 44) this: "Del'd to E. A. McIntire, June, 1882, R. R." I find on the copy of deed from Jenison to Taylor (Exhibit A. H. No. 45) this: "Del'd to E. A. McIntire, June 5, 1882, R. R." I find on copy of deed from Herndon to Taylor (Exhibit A. H. No. 46) this: "Del'd to E. A. McIntire, June 7, 1882, R. R." I find on copy of deed from McIntire, trustee, to Taylor

(Exhibit A. H. No. 47) this: "Del. to E. A. McIntire, July 17, 1882, R. R." I find on copy of deed from McIntire to Taylor (Exhibit A. H. No. 48) this: "Del. to E. A. McIntire, Jan. 5, '83, R. R.," and I find on copy of deed from McIntire, trustee, to Taylor (Exhibit A. H. No. 49) this: "Del. to E. A. McIntire, Aug. 6, '83, R. R."

Q. If the originals of any of these deeds had been delivered to the grantees this marginal note would have shown that fact, would it not?

A. Yes, sir; instead of being marked delivered to E. A. McIntire it would have been marked to the grantee.

Q. And that, you say, has always been the practice of your office?

A. Yes, sir.

Cross-examination.

By Mr. HENKLE:

Q. When did you say you went into the office?

A. November 8th, 1889.

Q. You were not in there in 1882?

A. No, sir.

Q. How do you know what the custom was in 1882?

A. By asking.

Q. Of whom did you ask?

677 A. The deputy recorder.

Q. That is all the knowledge you have about that?

A. No, sir.

Q. You have no knowledge of your own at all?

A. No personal knowledge.

Q. Then you are testifying simply from hearsay?

A. Yes, sir

Q. Purely from hearsay?

A. Yes, sir.

Mr. HENKLE: I object to the testimony of this witness upon the ground that it is based upon hearsay solely, and that he has no knowledge of his own, and therefore his testimony is incompetent.

Redirect examination.

By Mr. MACKEY:

Q. Are the same entries made now on the margins of the records, in respect of deliveries of deeds, as you find made on the margins of the records for 1880, 1881, 1882, 1883, 1884, 1885, etc.?

A. They are.

Q. Is there any difference whatever?

A. None whatever.

Q. Have you, as an officer in that office, been instructed as to the meaning of these marginal entries upon the records of the deeds which were recorded in 1880, in 1882, etc., and prior to your induction into office?

A. I do not understand the question.

678 Q. Have you learned from anybody in the office, from any officer in the office of the recorder of deeds in and for the District of Columbia, as to what the meaning of these entries on the record of deeds is?

A. I have.

Q. Is it or is it not part of your duty as clerk in that office to know the meaning of those entries on the record?

A. Yes, sir.

Q. And it being your duty as such to know the meaning of those entries, you have learned it from the officers in the office?

A. Yes, sir; from the officers in charge.

Recross-examination.

By Mr. HENKLE:

Q. Who instructed you as to the meaning of those marginal entries?

A. The first instruction I got from James M. Trotter, who was recorder of deeds before Mr. Bruce.

Q. When was he there?

A. He was there from November. I do not know the exact time he went in, but he went out on February 8, 1890.

Q. Was he there in 1882?

A. I think not.

Q. He did not instruct you as to the meaning of these entries in 1882?

A. My next instruction was from Col. Schayer, the deputy recorder.

Q. When did he instruct you?

679 A. When he came in under Mr. Bruce.

Q. When was that?

A. February 8, 1890, I think.

Q. He instructed you back as to 1882?

A. Nobody instructed me in 1882. I was not there in 1882. Both Mr. Trotter and Col. Schayer instructed me what the marginal notes on the deeds meant.

Q. And they were in office after 1882 and neither of them there as far back as 1882?

A. Yes, sir; Col. Schayer was there in 1882.

Q. Did he tell you what the marginal notes on deeds filed in 1882 meant?

A. He told me that such a marginal note on the record of a deed meant that the original deed was delivered, whether in 1882 or 1866.

Q. You say that when a party brought the receipt for a deed he was asked whom it was for?

A. Not always. We generally asked his name.

Q. And then what did you do?

A. Then, of he gave us his name, and he is the grantee, we mark it delivered to grantee.

Q. By whom were these questions asked?

A. I suppose by the man who had my place. I ask them now.

Q. You deliver the deeds now?

A. Yes, sir; also Mr. Fisher, who is the office-, and Col. Schayer sometimes.

Q. How long have you been at that desk?

A. Since November 8, 1889.

680 Q. You were not there before 1889?

A. No, sir.

Q. You do not know what questions were asked before that time?

A. The same question. I was instructed to ask the same question.

Q. How do you know of your own knowledge what they asked before you were there?

A. Colonel Schayer, I suppose, asked the same question before that time.

Q. How do you know what Col. Schayer asked before that time?

A. I only know what he instructed me to ask in 1889.

Q. You do not know what was asked the person who brought back a receipt prior to your time?

A. No, sir.

Q. So that all you have testified to as to what took place or what questions were asked prior to 1889 is hearsay?

A. Yes, sir.

Mr. HENKLE: I object to the whole of this deposition on the ground that it is based upon hearsay, and therefore incompetent.

ALLEN E. WILSON.

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681 *George F. Schayer.*

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Direct examination.

By Mr. MACKEY:

Q. You are the deputy recorder of deeds in and for the District of Columbia?

A. I am.

Q. You may state when you first held that position.

A. Over twenty-four years ago.

Q. How many years have you been deputy recorder of deeds?

A. I have been deputy recorder of deeds since that time up to the present time, with the exception of little over three years when I was not connected with the office.

Q. What three years were those?

A. From the latter part of 1886 to the beginning of 1890.

Q. Will you state whether the practice of your office in respect of giving a receipt to a party who leaves a deed for record and the returning of that receipt after the deed is recorded and the meaning of the entry upon the margin of the record of the deed as to the

date of the delivery of the original deed and the person to whom delivered is the same today as it was in 1882?

A. For every deed received for record a receipt is given.

Q. I ask you whether the practice of your office is the same today in respect to those matters as it was in 1882, 1883, 1884, and 1885.

A. Substantially the same, and it has been the same, to my knowledge, ever since the office was established, because the
682 same entries are found upon the record of deeds even before my first connection with the office.

Cross-examination.

By Mr. HENKLE:

Q. That entry is made on the margin of the record simply as a usage of the office?

A. Simply a custom of the office to show what has become of the original deed.

Q. There is not law authorizing it?

Mr. MACKEY: Objected to; the law speaks for itself.

A. No, sir; not to my knowledge.

Q. It is simply a usage of the office to know what has become of the original deed?

A. Yes, sir; and it is a very essential custom.

Q. Where the party who brings the receipt and takes the deed is not known to the officer who delivers the deed, how do you ascertain to whom the deed is delivered?

A. The question is asked to whom the deed goes; then the name that is given is entered upon the receipt, and from the receipt it is entered against the record of that deed.

Q. And that is the only way you know whom the deed is for—that is, by the answer of the person who presents the receipt?

A. As to persons who are not known to us.

Q. In that case you take simply the word of the person who presents the receipt and make the entry according to the information you get from that person?

683 A. Yes, sir.

Q. And you do not have any other information than that?

A. That applies to the original receipts for the deeds when they are presented for record.

Q. I mean when you deliver the original deed after it has been recorded.

A. Yes, sir. Sometimes deeds are obtained without the original receipts coming back, but the record will show that, and the person taking the deed has to receipt for it in a separate book.

Q. But where you do not know the person who presents the receipt, his statement as to whom it is for is all the evidence you have?

A. That is all.

Redirect examination.

By Mr. MACKEY:

Q. State whether or not Mr. Edwin A. McIntire is well known to the employees of your office, and whether or not he was well known in the office of the recorder of deeds in 1882 and 1883 and thereabouts.

A. He was well known to me and also well known to the assistant I had. He has been known to me for many years.

GEO. F. SCHAYER.

Subscribed and sworn to before me this 5th day of August, 1893.

ALBERT HARPER, *Examiner.*

(Adjourned.)

684

AUGUST 10, 1893.

* * * * * * *

GEORGE L. MACK, who, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. Where do you live and what is your business?

A. I live at No. 310 L street southeast, and I work for the oil company of Nicolai Bros.

Q. Did you ever live at No. 108 F street, between First and Second streets northwest, in this city?

A. No, sir; I never lived there, but I rented the place and kept a wood and coal yard there.

Q. Who occupied it before you did?

A. There was nobody occupying it, only Mrs. Pryor called it hers.

Q. Look at this paper (Exhibit M. B. No. 1) and say whether you ever saw it before.

A. Yes, sir. Good L—! that paper is a long time off, ain't it! I think I got the keys at that time and opened that gate.

Q. On that order?

A. Yes, sir.

685 Q. Who gave you that order?

A. Mr. McIntire.

(NOTE.—Said order reads as follows: "Mr. Pryor will please deliver to Mr. Mack keys of No. 108 F street northwest. E. A. McIntire. September 24, '84.")

Q. To whom did you pay rent while you were there?

A. I carried it up to Mr. McIntire's office while I was there.

Q. How long did you stay there?

A. Well, I judge, to the best of my knowledge, I was there not less than fourteen months.

Q. And then you left?
A. Yes, sir.
Q. Do you know whether, shortly after you left, any buildings were put up there?
A. I remember buildings being put up there.
Q. After you left?
A. Yes, sir.
Q. This lot had a wood and coal yard on it before you went there?
A. Yes, sir; it was the same one.
Q. What rent did you pay?
A. Six dollars a month.

Cross-examination.

By Mr. HENKLE:

Q. To whom did you pay the rent?
A. To Mr. McIntire.
686 Q. This gentleman here (referring to the defendant Edwin A. McIntire)?
A. Yes, sir; this same gentleman.
Q. You paid it to himself?
A. Well, I would not say that I paid the rent every month to him; but I have paid him the rent I could not tell how many times.
Q. Have you the receipts?
A. Well, I think I can get them.

Redirect examination.

By Mr. MACKEY:

Q. When you did not pay the rent to Mr. McIntire himself you paid it at his office?
A. Yes, sir; at his office, on F street, across the alley, where there is a new building now.
Q. Next to Mr. Warner's office?
A. Yes, sir; I think so.

GEORGE L. MACK.

Subscribed and sworn to before me this 10th day of August, 1893.

ALBERT HARPER, *Examiner.*

Mr. MACKEY: I here give in evidence this piece of paper marked for identification "M. & B. No. 1," and just testified to by the witness Mack.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 51.)

(Adjourned.)

687 SEPTEMBER 6, 1893.

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CHARLES MEDFORD, who, being recalled and resworn, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. You are the same Mr. Medford, I believe, who heretofore testified in this case-in-chief?

A. Yes, sir.

Q. Will you please state when you entered into this contract, which has been offered in evidence here as Exhibit A. H. No. 18, whom you understood you were making that contract with? I will ask you whether any mention was made of the name of Martha McIntire at the time of making that contract or before.

Mr. HENKLE: Objected to, as it is totally immaterial whether Martha McIntire was mentioned or not and because the contract speaks for itself.

A. I never heard of the name of Martha McIntire until long after this contract was made.

Q. I notice that this contract is headed "Contract in duplicate between Medford & Waldron & Miss Martha McIntire." Was that on this contract when you signed it?

A. No, sir.

688 Q. Had Martha McIntire signed this contract before you signed it?

A. No, sir; all the writing below my signature was put there afterwards.

Q. Did you have any conversation with Edwin A. McIntire in regard to the price for which this work was to be done, and did he in any of those conversations state for whom he was having the work done? If so, state.

A. We had some words in regard to the price of the houses. We wanted more money than he wished to pay. Previous to the contract being made, of course, we settled upon the amount; but Mr. McIntire stated that he had some money which he wanted to invest for some lady in Philadelphia (he did not name any one), and that he could not pay as much as I wanted for the houses, and that he had only about so much money—I understood him to say about thirty-three hundred dollars. He said that if I could build the houses for that I could build them—that is, if I could build them for thirty-three hundred dollars.

Q. You may state whether at any conversation had with Mr. McIntire prior to the signing of this contract (Exhibit A. H. No. 18) he ever mentioned the name of Emma Taylor.

A. No, sir; I never heard the name of Emma Taylor or any one mentioned.

Q. Did he say to whom this money belonged that he had to invest?

A. He never said.

Q. He said, however, that it was a lady in Philadelphia?

A. Yes, sir.

689 Q. When, if ever, did you hear the name of Martha McIntire mentioned in connection with this property after the contract was signed?

A. It was long after the contract was signed and long after the work had been commenced; I cannot just state when; but there had been a good deal of brick laid, and I wanted some money so as to pay the bricklayers on the work, and he said that he was going to get money from a lady in Philadelphia by the name of Martha McIntire. That was the first time that I heard that name.

Q. State whether you got your money from him with ease or difficulty.

Mr. HENKLE: Objected to as totally immaterial.

A. With a great deal of difficulty.

Q. You may state whether you had occasion to go to him to get two hundred dollars.

A. Yes, sir. That was about the time I speak of, when the brickwork had progressed and the bricklayer wanted about two hundred dollars. I think it was on a Friday that I notified him that I wanted two hundred dollars for the bricklayers or the work would stop, and he said that he would have to see this lady; that he believed she had arrived here, but he was not sure of it; that she was up in the northwestern part of the city somewhere. I went Saturday for the money, and he told me that he could not get any. I insisted on having money, and told him that I could not get along without money, and he said he would go out and raise me

690 some. We went down the street together, and he started over after going down to 7th and Market space, to go to Ruff's bank, as I thought, to get some money; but he halted right there and told me to wait, and he turned back and went up the street and went into a store and came out and gave me one hundred dollars, and said that was all the money he could raise.

Cross-examination.

By Mr. HENKLE:

Q. Did you sign this contract, Exhibit A. H. No. 18?

A. I did.

Q. Did you sign it for your firm?

A. I did not sign it for my firm.

Q. Is it not signed by the firm of Medford & Waldron?

A. Yes, sir; but Mr. Waldron signed his own name.

Q. And you signed your own signature?

A. Yes, sir; as well as I can remember. It looks to me as if Mr. Waldron signed his name.

Q. Is the name of Medford signed by you?

A. Yes, sir.

Q. Is that your signature?

A. Yes, sir.
Q. You swear to that?
A. Yes, sir.
Q. And you swear that the name of Waldron was not signed by you?
A. I cannot say positively.
Q. You think that Mr. Waldron signed his name himself?
A. Yes, sir.
691 Q. Who made the & mark between the name of Medford and the name Waldron?
A. I made that & mark.
Q. And then Mr. Waldron stepped up and signed his name after that?
A. Yes, sir.
Q. Is that the way your firm sign papers?
A. No, sir.
Q. Why did you sign separately in this particular case?
A. Because I was present and he was present.
Q. When you were both present and make your firm signature do each of you sign your names in this way?
A. No, sir; this was the first contract we had ever made together.
Q. Why did you not sign your individual names?
A. He was present and there to put his own name to it. I think that is his handwriting, but I am not sure.
Q. Do you know when and where you did that?
A. In Mr. McIntire's office on F street.
Q. Whereabouts on F street?
A. On F street, in his own building.
Q. Were any persons present then?
A. I do not think there were, except that his clerk might have been present.
Q. Who was his clerk—a lady?
A. No, sir.
Q. Was there no lady there to witness it?
A. No, sir.
692 Q. Was that signature of Emma T. McIntire as a witness there at that time?
A. No, sir.
Q. You swear to that?
A. Yes, sir.
Q. And do you swear that the signature of Martha McIntire was not put there then?
A. Yes, sir; I do swear that neither the name of Martha McIntire nor the name of Emma T. McIntire was on that paper then.
Q. Did you ever see that before?
A. Not until today.
Q. I mean did you ever see before on this paper these words, "the above offer is accepted by me"?
A. No, sir; there was nothing below my name.
Q. Whom did you understand to be the other contracting party in this contract?

A. Mr. Edwin A. McIntire.
Q. Why did you not have Mr. Edwin A. McIntire sign it?
A. Because I did not have any better sense, I suppose.
Q. Did you know that in order to bind him it was necessary that the contract should be signed by him?
A. I did not know it then.
Q. How old were you when you made this contract?
A. Over fifty years of age.
Q. How long have you been in business?
A. Off and on all my life.
Q. Did you ever make a contract before?
A. Yes, sir; and since, without witnesses.
693 Q. Did you ever make a contract before and sign it yourself without the other party signing it?
A. Yes, sir.
Q. Was it your understanding that Mr. Edwin A. McIntire and nobody else was to sign that contract?
A. That was my understanding. I did not know anybody else in the transaction. He wrote the whole thing.
Q. You did not ask him to sign it?
A. No, sir; it was in his handwriting.
Q. You signed the contract and did not ask him to sign it?
A. Yes, sir.
Q. And you supposed that nobody else had anything to with this contract?
A. Yes, sir.
Q. Is this the contract which you signed?
A. Yes, sir.
Q. You are sure this is the contract (Exhibit A. H. No. 18) which you signed?
A. Yes, sir.
Q. Are there any alterations in it made since you signed it, except what you have said about the signature at the foot of it?

Mr. MACKEY: Objected to because the contract will show whether or not there are any alterations in it.

A. There is something written over the head there which was not there when I signed it.
694 Q. Look at the body of the contract and see if you find any changes.
A. I do not see any.
Q. On the second page of this contract, in the body of it, opposite the word "painting," on the margin, I read these words: "To be of good material; painted with three coats of good paint, or to be stained & varnished if Miss McIntire prefers," etc. I want to know who that Miss McIntire was.
A. That may have been there. I do not think that was changed.
Q. Who was Miss McIntire?
A. I do not know.
Q. Did you not suppose that she was a party with whom you were contracting?

A. No, sir.
Q. Did you read this contract?
A. No, sir.
Q. But you signed it?
A. I signed it.
Q. Did you have a copy of it?
A. That is the one I had.
Q. Did you produce it here?
A. No, sir; I did not produce it here.

Mr. McINTIRE: I produced it. He never had it in his hands.

Q. You say that you produced this contract?
A. I did not bring it here.
Q. Did you have a copy of it?
A. No, sir; that is the contract I had.
695 Q. This is the one you kept?
A. Yes, sir.
Q. After it was signed you took it?
A. Yes, sir.
Q. How did it get into this case?
A. It got into the case because Mr. McIntire and myself in the police court had a little trouble in regard to the permit for building those houses. He was taken up for building the houses without a permit and he asked me to leave that contract at his house. He did not want it produced in court, as they would ask me as a witness for my contract, and I left that contract in his office.
Q. He never had any copy of this contract?
A. He had a copy.
Q. Were there two copies made at the time—that is, a copy and the original?
A. I presume so. He wrote the whole contract.
Q. Did he write two copies?
A. I do not know about that. He wrote the one that I signed and which Waldron signed and I took it way. I may have signed one for him.
Q. You took it away?
A. Yes, sir.
Q. You do not know whether any copy was signed or not?
A. No, sir.
Q. You signed it, but he did not sign it, and you took it away and kept it?
A. Yes, sir.
696 Q. When you produced it in the police court?
A. I did not produce it in the police court. Before the trial came off in the police court Mr. McIntire asked me to hand him my contract. He said that I would be asked for it in the police court, and then for some reason, I do not know what, he kept it from being shown—for what reason I cannot say. At any rate, I gave him the contract.
Q. Is this the one (Exhibit A. H. No. 18) which you gave him?
A. Yes.

Q. How do you recognize it?

A. From the signatures and its general appearance.

Q. Supposing that two of them were made at the same time and Mr. McIntire took one and you kept the other, could you tell which one this is?

A. No, sir; I could not, because both ought to be alike.

Q. You cannot tell whether this is the copy of the contract or not which you had?

A. Yes; I can.

Q. How?

A. From the folds in the paper. I carried it in my pocket for quite a time while building those houses.

Q. There is no private mark on it?

A. No, sir.

Q. Mr. McIntire wrote the whole of it except the signatures?

A. Yes, sir.

Q. And you think he may have one?

A. Yes, sir.

697 Q. I want you to tell me who Miss McIntire was, named in this contract.

A. I do not know.

Q. And yet you were contracting with Miss McIntire's name on the face of the paper.

A. No, sir; I was not.

Q. What do you mean by this clause, "Painting to be of good material; painted with three coats of good paint, or to be stained & varnished, if Miss McIntire prefers," etc.?

A. I had nothing to do with that whatever. I was dealing with Mr. McIntire himself. He said that he had some money to invest for a lady.

Q. What had the preference of Miss McIntire to do with this contract?

A. I suppose he wanted to consult with this party.

Q. It was to be submitted to Miss McIntire and you were to do this job?

A. No; this lady.

Q. You swear that this contract has not been charged?

A. No; I think not.

Q. I want to know what you meant by this clause in this contract as to any preference by Miss McIntire.

A. I did not mean anything by it, because I did not put it there.

Q. You signed it?

A. Yes, sir.

Q. You knew it was there?

A. Yes; but I was dealing with Mr. McIntire at the same

698 time. I was not dealing with Miss McIntire.

Q. Did you ever see Miss Martha McIntire in connection with these buildings?

A. I did at one time see a lady said to be Miss Martha McIntire.

Q. When?

A. When the buildings were nearly completed.
Q. How did you happen to see her?
A. I was trying to get some money to pay the subcontractor. Mr. McIntire put me off and made excuses, and he said that Miss McIntire must see the houses.
Q. And then what?
A. That is the first time I ever knew anything about Miss McIntire, though her name is written in the contract.
Q. You knew it was written in the contract?
A. No, sir; I never read that contract.
Q. Did you not just now say that you knew her name was in the contract?
A. I say that I did not see any alterations in that contract.
Q. Did you not say that you knew her name was in the contract?
A. If I did, I recall that. I may have said only from memory, Mr. McIntire broke the contract. I cannot say positively whether the name was there or not. I did not read the contract.
Q. Did you say that you signed the contract without reading it?
A. Yes, sir.
Q. Did you not say while ago that you know what was in
699 the contract?
A. Yes, sir.
Q. You say that when the buildings were approaching completion you were pressing Mr. McIntire for money, and he said that Miss McIntire must see the houses?
A. Yes, sir; so as to get some money from her.
Q. Why should she pay the money?
A. I do not know.
Q. Did you not know that they were her houses?
A. No, sir.
Q. Why was it that Miss McIntire was to see the houses before the money was furnished?
A. I do not say that she said so, but he said so. He wanted to see whether she was satisfied.
Q. Did you know why he should go to her for the money?
A. He represented that. I do not say that.
Q. Your understanding was that she must be satisfied before she paid the money?
A. No, sir; he wanted me to believe that; I did not. I was not dealing with her.
Q. Did you see her at any time?
A. Not until that time.
Q. Did you see her then?
A. He appointed a day when she would be there, and I met her there with him.
Q. And then what?
A. He went through the houses with Miss McIntire. He introduced me to her as being Miss McIntire (that was the first
700 time I saw her), and I went along through the houses with them.
Q. You showed her the houses?

A. No, sir.
Q. Who did?
A. Mr. McIntire?
Q. You were along?
A. Yes, sir.
Q. Was she satisfied?
A. She seemed to act as if she did not have anything to do with the houses. He would ask her questions—how she liked this room or this closet or this part of the work, and she would say that it was all very nice; that she liked it, or something like that. I did not ask her any questions.
Q. Did she furnish you any money?
A. She did not furnish me any money.
Q. Did she furnish him money?
A. I do not know.
Q. Did he pay you then?
A. No, sir.
Q. When did he pay you?
A. He paid some of the subcontractors whom I sent to his office and he charged it to me on the contract.
Q. Did you ever see her at any other time in connection with those houses?
A. No, sir; no. I saw her once afterwards, but not before.
Q. Where did you see her afterwards?
A. At Grace church, on 9th street northwest, in this city.
Q. Did you know then that it was Miss McIntire?
701 A. Only from the fact that I met her down at the buildings and when she came into the church I recognized her.
Q. When was it that he told you that he was to get the money to build the houses from a lady in Philadelphia?
A. Well, he told me that before the contract was made; that he had some money to invest for a lady in Philadelphia, but he did not name any one.
Q. What did you say about a lady in the northwest part of the city?
A. I said that this lady I met up in the northwest part of the city at the church.
Q. What did he say to you in the early part of this building affair about a lady up in the northwest part of the city?
A. He said that it was a lady in Philadelphia; that she seldom came here, and that when she did come here she stopped somewhere up in the northwest part of the city.
Q. Then you understood from him that the work was being done for a lady in Philadelphia?
A. No, sir.
Q. What was it—that the money was to come from a lady in Philadelphia?
A. I get the impression from Mr. McIntire in my dealings with him that he was to get the money from somewhere else. I never believed anything else but that he was building the houses for himself.

Q. You are ordinarily a prudent man?
A. Well, I am prudent sometimes.
Q. Did you look to see who held the title to this land be-
702 fore you undertook to build those houses?
A. No, sir.
Q. Did Mr. McIntire tell you in whom the title was to that land?
A. No, sir.
Q. He did not tell you whose land it was?
A. No, sir.
Q. And you just went on and built those houses on this land without knowing to whom it belonged?
A. Yes, sir.
Q. What did your contract amount to?
A. Thirty-three hundred dollars ($3,300).
Q. And you undertook that contract without knowing who owned the houses?
A. Yes, sir.
Q. And then Mr. McIntire wrote this contract without having a duplicate?
A. I signed the contract—there must have been papers. He must have had one of his own and signed that.
Q. You are sure that he signed the other?
A. I suppose so.
Q. Where did his obligation come in if he did not sign this contract?
A. Not much anywhere. I do not know that the contract would come in much anywhere, with no witnesses to it. I have made lots of such contracts as those, loose, without witnesses.
Q. Did you ever have any difficulty with Mr. McIntire?
A. No, sir; no further than the transaction in regard to the
703 houses. It was not really a difficulty; it was what comes up in the building business, sometimes disagreements about payments and how certain things should be done and so on, but nothing really to cause any animosity between us, and today we are not unfriendly, that I know of; we speak and I have been in his office.
Q. Did you employ counsel to bring suit against him for anything?
A. No, sir; I employed counsel to defend me in the police court about the permit.
Q. Did you ever since the building of those houses go to Mr. McIntire and ask him to employ you on other buildings and he did not do it?
A. I have been in the office and asked him if he had any work to give out.
Q. He never gave you any after that?
A. No, sir.
Q. Did he give some to your partner?
A. Yes, sir.
Q. And he refused to give you any?

A. He did not refuse to give me any. He said that he did not have any.

Q. Did you have any feeling about it?

A. Not a bit. I would work for him today if he had anything for me to do and wanted me to do it for him.

Q. How did you come to be a witness in this case?

A. I think Mr. Mackey sent for me.

Q. How many interviews have you had with Mr. Mackey?

704 A. I think I have been to his office here once besides this.

Q. How many other times?

A. Once he came to my house and said that he would have to take some more testimony and for me to come down here, and he sent me a note yesterday to come down here today.

Q. Did Mr. Mackey tell you a hard story about Mr. McIntire?

A. No, sir.

Mr. MACKEY: Perhaps I did not need to. He knew without my telling him.

Q. Did you not employ Mr. Irving Williamson to bring suit against Mr. McIntire?

A. No, sir.

Q. Do you not know that Mr. Williamson, as your attorney, wrote Mr. McIntire threatening to bring suit against him if he did not pay you something on account of extras which you claimed?

A. No, sir. Mr. Williamson is my attorney and has been my attorney in several instances. I employed him in the case at the police court. I may have talked the matter over with him about the balance due from Mr. McIntire to me of eighty-odd dollars in the construction of those houses, but that long since passed out of my mind. I did think about bringing a lien and trying to get that money.

Q. Did you employ Mr. Williamson to do that?

A. No, sir; I do not remember that I did.

705 Redirect examination.

By Mr. MACKEY:

Q. When Miss McIntire went to look at those houses did she act like a person who owned the houses?

Mr. HENKLE: Objected to. The witness can state what she said, but he cannot state how she acted.

A. No, sir; she did not act as if she owned the houses. She acted more like a disinterested party to me.

Q. What were her actions which led you to think that she acted like a person who did not own the houses?

A. Well, if she had been the party who owned the houses, to my mind, she would have asked me questions about the houses, but she did not ask me one question about the plastering or the brick-work or the painting or the trimmings or anything of the kind. She

walked through the houses with Mr. McIntire and I walked along with them. He would ask her some questions, some of which I can remember, something like, "This is a pretty room." "How do you like this room?" or this closet, etc., and she would say it looked very nice or something of that kind.

Recross-examination.

By Mr. HENKLE:

Q. Do you remember having any conversation with her about concreting the cellar; did she not say to you that she wanted the cellar concreted and you objected?
A. No, sir.
Q. Nothing of that kind?
A. No, sir.
706 Q. Nothing said at that time about concreting the cellar?
A. No, sir.
Q. You are sure of that?
A. I am sure of it; it has been a long time ago, and if I said it I do not remember anything of the kind.
Q. Did you concrete the cellar?
A. Yes, sir; I did.
Q. Was it done at that time, when she was there?
A. I hardly think it was; I do not know.
Q. Was it not done in consequence of her insisting upon it at that time or at any other time?
A. No, sir; if it was not written in the contract it was, anyhow, understood that I was to concrete the cellar.
Q. And you did not object at any time to doing it?
A. No, sir.
Q. Do you remember her saying anything about a pump in the alleyway?
A. No, sir.
Q. Did you put a pump in there afterwards?
A. Yes, sir.
Q. And was it not done by her direction?
A. No, sir.
Q. She said nothing about it?
A. No, sir.

CHAS. MEDFORD.

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(Adjourned.)

707 SEPTEMBER 30, 1893.

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Floyd Harleston.

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Direct examination.

By Mr. MACKEY:

Q. Look at this postal card, heretofore marked for identification ("M. & B. No. 2"), and state whether the initial letter "H," below the name of E. A. McIntire, on that card is the initial of your name, and whether that postal card was written by you.

A. Yes, sir.

Q. You were at the time of the writing of that postal card employed with Mr. Edwin A. McIntire?

A. Yes, sir.

Mr. MACKEY: I here give that postal card in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 52.)

Mr. HENKLE: To the admission of which and to this testimony I object as immaterial and waive cross-examination.

FLOYD HARLESTON.

Subscribed and sworn to before me this 30th day of September, 1893.

ALBERT HARPER, *Examiner.*

708 WILLIAM F. HELLEN, being produced as a witness, of lawful age, for and on behalf of the complainant and being first duly sworn, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. What is your business or occupation?

WITNESS: Well, now?

Mr. MACKEY: What it is now and what it has been?

A. Mostly building, for the last two years—building houses and selling them.

Q. What was it before that?

A. I had been in the real-estate business since 1879, I think it was.

Q. Are you familiar with the locality of F street between First and Second streets northwest, in this city?

A. Yes, sir.

Q. What, in your judgment, is land worth there today, on the south side of the street, about midway of the square—that is, what is land worth per square foot there today?

Mr. HENKLE: Objected to as immaterial.

WITNESS: Well, vacant ground?
Mr. MACKEY: Yes; vacant ground.
A. I think about one dollar and fifty cents per square foot.
Q. That is, irrespective of the improvements?
A. Yes, sir; probably worth a little more than that.
709 Q. What, is your judgment, was it worth in 1881?

Mr. HENKLE: Same objection.

A. About seventy-five or eighty cents per square foot.

Cross-examination.

By Mr. HENKLE:

Q. What did you say you were doing at that time?
A. In the real-estate business.
Q. Was that your exclusive business at that time?
A. Yes, sir.
Q. Well, now, did it make any difference, or does it or did it then make any difference, as to the size of the lot? Supposing a lot was twenty-six feet front—that would be a pretty large lot for one house and too small for two houses, would it not?
A. Well, I do not think it would be too small for two houses there.
Q. In view of that size of the lot, is it your opinion that the lot would have been worth seventy-five or eighty cents per square foot in 1881?
A. It is my recollection that "Dick" Smith gave me some property to sell there at that time for eighty cents per foot.
Q. My question is whether it makes any difference as to the size, whether it is twenty-six feet front. You say, however, that such width would not be too narrow for two houses?
A. No, sir.
Q. It would be a very narrow house, would it not?
A. It would be thirteen feet front. I have seen very nice
710 houses of that size.
Q. You do not think that that would affect the value?
A. I do not think it would in that locality.
Q. Did you ever have any transaction in real estate in that locality?
A. Well, I say that I had property along there put in my hands for sale by Dick Smith.
Q. Did you sell it?
A. No, sir; I could not sell it at that rate.
Q. Did you try to sell it?
A. I did.
Q. You did not succeed?
A. No, sir.
Q. Did you have any offers for it?
A. I do not think I did.
Q. So you could not sell Mr. Smith's ground there at that price?
A. I did not sell it.

Q. You tried to sell it?

A. Yes, sir.

Q. Is that the only ground upon which you base your estimate?

A. No, not exactly; I recollect about that time a lot near the corner of Third and F streets, just in that locality, was put up at auction at ninety-five cents per square foot.

Q. Was it on the corner?

A. Yes, sir; it was on the corner, I should have said, of Third and F streets northwest.

Q. That was much more valuable than being located in the middle of the square?

A. Yes, sir.

711 Q. In what year was that?

A. That must have been about 1881 or 1882.

Q. Have you any definite recollection of the value of ground at that point in 1881 or 1882 that you could testify to?

A. Well, what I have stated is all that I can recollect about property in that locality.

Q. That is that Mr. Smith put property along there in your hands to sell at eighty cents per square foot, and you did not sell it?

A. Yes, sir.

Q. And you tried to sell it?

A. Yes, sir.

WILLIAM F. HELLEN.

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Pedrick F. Cusick.

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Direct examination.

By Mr. MACKEY:

Q. In 1881 were you engaged in buying and selling real estate in this city?

A. Well, I was engaged in buying it wherever I saw an opportunity and disposing of it.

Q. Were you familiar with the locality of F street between First and Second streets northwest, in this city?

712 A. Yes, sir; I have been around there all my lifetime.

Q. What, in your judgment, was land, say somewhere about the middle of the square, on the south side of F street between First and Second streets northwest, worth in 1881?

Mr. HENKLE: I object that the witness has not been shown to be competent to testify as an expert as to the value of property at that time, and also because immaterial to the issue in this case.

Mr. MACKEY: Let it be understood, Mr. Henkle, in order not to incumber the record, that, without repetition, you make objection to the testimony of these witnesses as to value because immaterial, etc.

Mr. HENKLE: Very well.

A. I should judge, about seventy-five or eighty cents per square foot; along about there.

Q. Did you ever buy or sell any land in that neighborhood?

A. I bought some on F street, belew New Jersey avenue, about a half a square below this property, in 1879.

Q. You were inquiring as to prices around there at that time?

A. Well, I always kept posted as to the value of ground around there at that time.

Q. Have you any judgment now as to the value of land in that locality at this time? I am speaking about F street between First and Second streets northwest, in this city, about the middle of the square and around there?

A. I should judge, about one dollar and fifty cents per
713 square foot.

Cross-examination.

By Mr. HENKLE:

Q. What was your business in 1881?

A. I was in the saloon business.

Q. Where was your saloon located?

A. At Second and H streets northwest, in this city.

Q. How far from this property?

A. Two blocks. Well, Massachusetts avenue cuts in there, and that makes it about three blocks.

Q. Were you engaged in buying and selling property for other people?

A. No, sir.

Q. You never bought or sold real estate for anybody else than yourself?

A. No, sir.

Q. What property did you buy in that neighborhood for yourself?

A. I bought on F street below New Jersey avenue, and then I bought in the rear of it; I guess in that square, right below it. Well, at that time, in 1879, I bought on F street below New Jersey avenue.

Q. How far was that from this property?

A. I guess about two or three hundred feet.

Q. Was it on the corner?

A. Yes, sir; I should have said that it was on the corner of F street and New Jersey avenue instead of below New Jersey avenue.

714 Q. It was right on the corner?

A. Yes, sir.

Q. It had two fronts?

A. Yes, sir.

Q. What did you pay for it?

A. Well, I paid, I judge, a little over a dollar a foot. I did not buy it by the foot, but in lump.

Q. Did it have any improvements on it?
A. Yes, sir.
Q. What improvements were there on it?
A. It had a frame house and an old brick building, with a lot of darkies living in it, which I had to tear down and improve it and put a new front in it.
Q. How many feet on New Jersey avenue?
A. Fifteen feet four inches.
Q. How much on F street?
A. Well, I cannot say exactly, but I think about one hundred and twenty-six or one hundred and twenty-eight feet.
Q. Which was the front?
A. New Jersey avenue; that is where it fronts now.
Q. What did you do with the property after you bought it?
A. I lived in it.
Q. How long have you occupied it?
A. I occupied it in 1886 or later than that.
Q. You rented it out?
A. Yes, sir; I occupied it for about three years.
Q. What rent did you get for it?

715 A. I got, I think, fifteen dollars for the corner and eleven dollars for the other place. I got twenty-six dollars a month for a long time.

Q. Well, now, that is the only property you bought or sold in that locality?
A. Yes, sir.
Q. You bought some other?
A. Yes, sir; a great deal later.
Q. Well, in 1881 or 1882?
A. In 1881, I think—either 1880 or 1881—I bought some rear ground there.
Q. Back of the premises you have just spoken of?
A. Further down. The corner premises is No. 537 New Jersey avenue, and this is in the rear of No. 525.
Q. About half way down?
A. Not quite half way down, but pretty nearly.
Q. How much front was there?
A. Fronting on a fifteen-foot alley, I think, twenty-two feet eight inches.
Q. It was on an alley?
A. Yes, sir; it was twenty-two feet by twenty-six feet, I think.
Q. On an alley between what streets?
A. Between E and F streets and North Capitol and New Jersey avenue.
Q. Those are the only two houses you bought there at that time?
A. No, sir.
Q. What else did you buy?

716 A. I bought some more alley lots right below them, further down in the square, fronting on an alley, for which I paid thirty cents per square foot.

Q. What was the size of those lots?

A. About thirty-one feet by forty feet.
Q. Front on an alley?
A. Yes, sir.
Q. You bought them to build tenement-houses on?
A. I bought them at the time for wagon sheds. I had teams at that time.
Q. Were there any houses on them?
A. No, sir; it was a dumping ground, with five or six hundred loads of ashes there.
Q. When was it that you bought those last lots?
A. I will not say for certain, but it was about 1884, 1885, or 1886.
Q. Property had enhanced in value then somewhat?
WITNESS: At that time?
Mr. HENKLE: Yes.
A. I suppose it had.
Q. Considerably higher in 1885 than in 1881?
A. Well, I do not know; I do not think so. It may have been a little higher, but not considerably higher.

Redirect examination.

By Mr. MACKEY:

Q. That property you speak of on New Jersey avenue, were the improvements upon it worth much?
717 A. No, sir; I had to spend right smart money on it.
Q. What did the improvements consist of?
A. A frame house on the corner; and then down below that two little bricks, one used as a plumbing shop and the other by darkeys.
Q. What proportion did those improvements bear to the value of the lot?
A. I never heard it mentioned.
Q. What was the size of the lot?
A. Fifteen feet four inches front and, I think, about one hundred and twenty-six or one hundred and twenty-eight feet deep. It is a peculiar-shaped lot.
Q. You say it is fifteen feet front?
A. Yes, sir; on New Jersey avenue, and one hundred and twenty-six or one hundred and twenty-eight feet on F street.
Q. Do you know how many square feet?
A. I do not think I ever figured that up.
Q. You say that you reckon it cost you about one dollar a foot?
A. Yes, sir.
Q. What was the whole sum you paid for it?
A. Eighteen hundred and fifty dollars.
Q. That would be eighteen hundred and fifty square feet?
A. I do not think there was that much in it.
Q. Then it was worth more than a dollar a foot?
A. I think it runs ninety-seven feet—when you get back ninety-seven or a hundred feet, then the rear end of the lot was about a

hundred feet, and then there was a three-foot alley there, and then it runs along the three-foot alley.

718 Q. Then there were about sixteen hundred feet in it?

A. Yes, sir.

Q. And you say it cost you a little over a dollar a foot?

A. Yes, sir; that would make it cost a little over a dollar a foot.

Q. You say that you paid eighteen hundred and fifty dollars for it?

A. Yes, sir.

Q. Would two hundred and fifty dollars pay for the improvements?

A. No, sir.

WITNESS: You mean the improvements which were on there at the time I bought?

Mr. MACKEY: Yes.

A. I do not think it would.

Q. What is your idea of the improvements on there at the time you bought?

A. They were old buildings—an old frame on the corner—which had been there for a number of years.

Q. I want to get at the value of the land as separate of the buildings on it.

A. The buildings were not worth much.

Recross-examination.

By Mr. HENKLE:

Q. You moved into the house after you bought it?

A. No, sir; not for some years after.

Q. You rented it out as a dwelling-house?

719 A. Yes, sir.

Q. Was it a two-story or a three-story house?

A. Two stories and cellar.

Q. Was it in good condition?

A. No, sir.

Q. Did you put repairs on it?

A. Yes, sir.

Q. How much repairs?

A. I judge, about in the neighborhood of twelve or fifteen hundred dollars.

Q. When you first bought it?

A. Yes; some time afterwards.

Q. And then you rented it for twenty-five dollars a month?

A. Yes, sir; a little over twenty-five dollars a month.

Q. If it had been a vacant lot, what would it then have rented for?

A. I do not think it would have rented for anything.

PATRICK F. CUSICK.

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720 *John O. Connor.*

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Direct examination.

By Mr. MACKEY:

Q. Where do you live?

A. No. 614 Second street northwest, in this city.

Q. You are familiar with the neighborhood as the south side of F between First and Second streets northwest, in this city?

A. Yes, sir; I have been there in the neighborhood of forty or fifty years.

Q. You are a property-owner there, I believe?

A. Yes, sir; I put up the first house on the square, I believe, there on F street.

Q. Were you posted as to the value of land around there in 1881?

A. Well, yes, to a certain extent. I took a little interest that way.

Q. You owned land there then?

A. Yes, sir.

Q. What, in your judgment, was land worth there, say in the middle of the square, in 1881?

A. The market price was about seventy-five or eighty cents per square foot.

Q. How about land put up under the hammer?

A. You could not sell it.

Q. You could not get much at a private sale?

721 A. No, sir; there was none offered.

Q. Do you know whether there was a wood and coal yard there run by a man by the name of Pryor?

A. Yes, sir; I knew the family.

Q. What was the land worth about that same year?

A. He was in the center of the square. At about the time that they put in the gas and water pipe there, it was worth about seventy-five or eighty cents a foot.

Q. What do you consider the value of that land today?

A. One dollar and fifty cents per square foot.

Q. You still own property there?

A. Yes, sir.

Q. Will you take one dollar and fifty cents per square foot for your land?

Mr. HENKLE: Objected to.

A. Not while it is paying me such interest.

Cross-examination.

By Mr. HENKLE:

Q. What is your business?

A. I am doing nothing at present. I have been in the carriage business.

Q. Driving a hack?
A. Yes, sir.
Q. Did you own the hack?
A. Yes, sir.
Mr. MACKEY: More than one?
722 WITNESS: Yes, sir. The last business I done was keeping a boarding stable.
Q. Now you are not engaged in any business?
A. No, sir; not at present.
Q. Did you ever buy and sell real estate as a business?
A. No, sir.
Q. How many pieces of real estate did you own at that time?
WITNESS: In 1881?
Mr. HENKLE: Yes.
A. I do not believe I owned but one piece in that time.
Q. Where was that?
A. Oh, yes, I owned another piece. I owned at the corner of Second and G streets. I lived on F street there.
Q. Where was that?
A. On F street between First and Second streets northwest, in this city.
Mr. MACKEY: On what side?
WITNESS: On the south side.
Q. How long had you owned it in 1881?
A. I bought it in 1863.
Q. Did you buy your vacant ground and build your house?
A. Yes, sir.
Q. What did you pay for your ground?
A. Twenty-five cents a foot.
Q. And you built your own house?
723 A. Yes, sir; I bought it from Mr. Thomas J. Fisher.
Q. Is that the only property you had bought there at that time, except the piece you have spoken of at the corner of G street?
A. Yes, sir.
Q. You never bought any other for yourself or anybody else?
A. No, sir; I only had the two pieces of property, one on F street and one near the corner of G street.
Q. Your business was that *if* a hackman?
A. Yes, sir.
Q. Have you been in the habit of buying and selling real estate?
A. No, sir; I bought some, but I have none to sell.
Q. Where did you buy?
A. On G street, next to the corner of Second street, and I bought a piece of property, a livery stable, back in the alley, between Second and Third and E and F streets.
Mr. MACKEY: Known as Madison's alley?
WITNESS: No, sir; Madison's alley runs between First and Second and E and F streets.
Q. When did you buy these two last pieces that you spoke of?

A. The one on G street about a year ago, I should judge, and the one in the alley about seven years ago.

Q. That is the extent of your real-estate transactions?

A. Yes, sir.

JOHN O. CONNOR.

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724 *Isaac Levy.*

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Direct examination.

By Mr. MACKEY:

Q. Are you familiar with the locality of the south side of F street between First and Second streets northwest, in this city?

A. Yes, sir; I own a piece of property there.

Q. How long have you owned it?

A. I believe I bought it in 1871 or 1872. I could not tell the year except I saw the deed.

Q. Is it the east half of lot 16, in that square 569?

A. Yes, sir.

Q. How many feet front has it?

A. Fifteen feet front.

Q How many feet deep?

A. One hundred feet deep.

Q. Then it contains about fifteen hundred square feet?

A. Yes, sir.

Q. What did you pay for it?

A. Four thousand dollars for the improvements and land.

Mr. HENKLE: All this is objected to as immaterial.

Q. What was the value of the improvements upon it?

A. At the time I bought I understood the improvements were worth about twenty-five hundred dollars.

Q. That would leave fifteen hundred dollars for the land?

725 A. Yes, sir.

Q. And there were fifteen hundred square feet in it?

A. Yes, sir.

Q. That was in 1871 or 1872?

A. Yes, sir.

Q. In 1881, Mr. Levy, what was land worth, in your judgment, in the locality of the south side of F street between First and Second streets northwest, in this city?

A. Indeed, I could not tell you what it was worth; I never inquired.

Q. You never made any inquiries?

A. No, sir; because I felt that I had paid a little too much money; I did not think the land was worth then seventy-five cents or eighty cents a foot there.

Q. Was it worth that much?

A. Yes, sir; because it was assessed at fifty cents a foot.

Q. So you think it was worth at least that much?
A. Yes, sir.
Q. What is land around there worth now?
A. That is something I could not tell; I never inquired; I never bought or sold a piece of property; but I should think it would bring at least one dollar or one dollar and fifteen cents per square foot all the way clear up there now.
Q. Your own real estate?
A. Yes, sir.
Q. You bought quite a number of pieces of real estate?
A. Yes, sir.

Q. If you were going to buy, would you object to paying
726 one dollar and fifty cents per square foot there today?

A. No, sir.
Q. Would you take one dollar and fifty cents per square foot for your land?
A. No, sir.

Mr. HENKLE: Question and answer objected to.

Cross-examination.

By Mr. HENKLE:

Q. What is your business?
A. I am in the paint and glass business.
Q. You never have made a business of buying and selling real estate?
A. No, sir; I always buy and never sell any; I have not sold a piece of property for five years?
Q. You are not a real-estate agent?
A. No, sir.
Q. And you never have been?
A. No, sir.
Q. You do not profess to be an expert in the values of real estate?
A. No, sir.
Q. You know better about the values of paint and glass?
A. Well, if I get hold of a piece of property I go and buy it.
Q. If you get an opportunity to buy a piece of property cheap you go and buy it?

A. Well, I buy a piece of property sometimes at a big
727 price if I want it.

Q. You think you paid too much for that property which you bought in 1872 on F street?
A. Yes, sir.
Q. How did you come to buy it?
A. The man owed me a little money, and I thought I could get even with him.
Q. You bought it to save yourself?
A. Yes, sir; but I did not save myself much.
Q. You would not have given that much in cash, do you mean?

A. That is what I mean.
Q. What kind of a house was on it?
A. A three-story brick and basement.
Q. Practically a four-story house?
A. Yes, sir.
Q. How many rooms in it?
A. It was a brand-new house, not finished.
Q. Do you know what the house cost to build?
A. I think it cost about twenty-five hundred dollars to build.
Q. Did you rent it?
A. Yes, sir.
Q. What rent did you get for it?
A. I got as high as thirty-three dollars and thirty-three cents a month. I am not getting that much now, only twenty-five dollars a month.
Q. Have you bought or sold any property in that square since?
A. No, sir; I have not been in that square since.
728 Q. You never have been engaged in buying or selling real estate at all?
A. No, sir.
Q. Where do you live?
A. No. 1015½ Seventh street northwest, in this city.
Q. Is your store there also?
A. Yes, sir; in the same building.
Q. You never have made any inquiry as to the value of property except when you were going to buy?
A. No, sir.

Redirect examination.

By Mr. MACKEY:

Q. How far is your property away from the property of the Pryors, upon which there used to be a little wood and coal yard?
A. I do not think it is very far away.
Q. Forty or fifty feet?
A. More than that, I guess. Mine is the third or fourth house from the corner of Second street.
Q. Your house is where?
A. It is the fourth house from the corner of Second street on the south side of F street.
Q. Would you have taken four thousand dollars for your property in 1881?

Mr. HENKLE: Objected to as immaterial.

A. I do not know; maybe I would have taken it. If I needed the money and anybody offered it I would have taken it, but I
729 would not take it now.
Q. Would it have been a fair price for it in 1881?
A. I believe it would have been a fair price.

ISAAC LEVY.

* * * * * * *

Harrison M. Bennett.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. What is your occupation?
A. I am a Government clerk.
Q. You are in the United States Treasury Department?
A. Yes, sir.
Q. Did you own some property in 1881 on F between First and Second streets northwest, in this city?
A. Yes, sir.
Q. On the south side of the street?
A. Yes, sir; I owned next door to Mr. Levy. I had the west half of lot 16 and he had the east half of the same lot.
Q. Were you buying and selling any property at that time?
A. No, sir.
Q. What, in your judgment, was land in the locality, say about the middle of the square, a little to the one side or the other of your property, worth in 1881?
730 A. I left there about 1874. When I left there I judge property along there was worth about seventy-five cents a foot. I should judge it ought to bring from seventy-five to eighty cents per square foot in 1881.
Q. You sold your property, did you not?
A. I sold it later.
Q. When did you sell it?
A. Somewhere along in 1887 or 1888.
Q. Did you live there in that house?
A. I lived there for about two or three years.
Q. What time was that?
A. I left there, I think, in 1874.

Cross-examination.

By Mr. HENKLE:

Q. Did you build your house there?
A. No, I did not—well, I did partly. When I bought it was not completed, and I completed it. There were two houses incomplete. A building association, I think, started those two houses. The building association had to take them, and I took mine from the building association.
Q. Did you take two houses?
A. No, sir; I took one of them.
Q. Were they alike?
A. Yes, sir; they were three-story and basement houses.
Q. How many rooms?
A. Eight rooms.
Q. When did you say you think you sold yours?

A. In 1887 or 1888; I do not remember exactly. Mr. Levy
731 took the other house.

Q. What did you pay for your house?

A. I do not remember just what I did pay. I think I paid about twenty-four hundred dollars—somewhere in that neighborhood.

Q. What was the size of your lot?

A. Fifteen feet by about one hundred feet.

Q. The same size as Mr. Levy's house?

A. Yes, sir; I think I had about an inch or two more than Mr. Levy.

Q. What did the house lack of completion when you bought it?

A. I do not remember exactly; we had to build a back building, a fence, a porch, and do some painting. I spent about three or four hundred dollars in completing the house.

Q. When you say that you built a back building you do not mean that you erected any buildings?

A. No, sir; they were sheds.

Q. What would your property have rented for if you had rented it?

A. When I went out of it I rented it for thirty-five dollars a month; but it afterwards went down, and it rented as low as twenty dollars a month afterwards.

Q. When was that?

A. I rented it for two years at the rate of thirty-five dollars a month.

Q. That was in what years?

A. In 1874 and 1875.

Q. At that time it rented for thirty-five dollars a month?
732 A. Yes, sir.

Q. And then it went down as low as twenty dollars a month rental?

A. In the depreciation of property there it did not rent so well; after that it got out of repair and I put colored people in it and I only got twenty dollars a month.

Q. What was its rental value in 1881?

A. I think we got about twenty-five dollars a month. I am guessing at that. I cannot tell exactly.

Q. Did you keep it in repair—in pretty good repair?

Mr. MACKEY: White or colored people in it?

WITNESS: I had colored people in there afterwards. I had white people in there at first; somehow or other Mr. Levy let his property run down and let colored people in there.

Q. Were not the majority of the people in that square colored people?

A. Not when I lived there.

Q. But in 1881?

A. No, sir; not on F street; there were darkeys living in the rear.

Q. Were there not several colored families living in the front on F street in 1881?

A. No; I guess not. There was a little shanty about where this

property in question is and some colored people lived there, and I think that is the only house in which colored people were.

Q. That is the only property you owned down there?

733 A. Yes, sir; at that time.

Q. You were not engaged in selling and buying real estate as a business?

A. No, sir.

Q. Do you know that a colored family lived next to this Pryor property?

A. There was a colored family in there, but I do not remember the name. I know Mrs. Madison lived in there. The name Pryor is very familiar to me. I think Mrs. Madison died there.

Mr. MACKEY: That was in the alley?

WITNESS: Yes.

Mr. MCINTIRE: No; in the front.

WITNESS: She had somebody, a connection of hers, on the front there. I think I witnessed Mrs. Madison's will while she was there.

Q. Did you know a colored man by the name of Luke Madison?

A. Yes; I knew him; he was a little, short man.

Q. Did he live there at that time?

A. Yes; that is so; he did live there on F street.

Q. Did he have some relatives living on the other side of him—west of him; colored people?

A. There was a large vacant lot there. It seems to me there was a brick house and then a little frame house in there. There was a two-story brick that this colored man lived in, and then a little frame in there. I think that was all the colored people living on the square.

734 Q. In the rear, on the alley, were there not colored people?

A. Yes, sir; and there was an old Irishman—a milkman—lived in there.

Q. They were all colored except this one Irishman?

A. Yes; I guess he was the only white man there.

Q. The alley was compactly built up?

A. When I lived there it was not so fully built up, but I think there have been some houses built there since.

HARRISON M. BENNET.

* * * * * * *

Charles C. Duncanson.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. What is your business?

A. Real-estate auctioneer.

Q. How long have you been in that business?

A. Since 1873, for myself.

Q. Are you familiar with the locality known as the south side of F between First and Second streets northwest, in this city?

A. Yes, sir.

Q. Did you ever have any sales of real estate in that local-
735 ity in 1881 or thereabouts?

A. Yes, sir; I have had several sales in that neighborhood.

Q. Well, judging from those sales and from the experience derived from them, what, in your judgment, was the value of land on the south side of F street in 1881?

WITNESS: What is the front and depth?

Mr. MACKEY: Twenty-six feet front by one hundred feet deep. I think that is the depth of all the lots along there.

A. Well, I should judge that it would bring from sixty to seventy-five cents per square foot at that time.

Q. At auction?

A. Yes, sir.

Q. What is land worth around there now?

A. I do not know of any sales at auction around there lately, but there was a sale, a private sale, which came to my knowledge about six months ago at one dollar and forty cents per square foot.

Cross-examination.

By Mr. HENKLE:

Q. What was the condition of the real-estate market in Washington in the year 1881?

A. The condition of the real-estate market in 1881 was not as good as it was in 1883, but better than it was in 1879.

Q. When you say that you had several sales in that neighborhood, were they in the year 1881?

A. Ranging from 1881 to 1883—that is, I should judge from 1879 to 1883.

735½ Q. Do you remember any sale you had in that square in 1881?

A. In the latter part of 1880 I had a sale of the lot at the corner and the lot adjoining the corner.

Q. What corner was that?

A. Second and F streets.

Q. Was that vacant land?

A. Yes, sir.

Q. What did that bring?

A. It was withdrawn at seventy-nine cents.

Q. Were there not some old houses on that corner?

A. I think there was an old frame house at the corner.

Q. Do you know whether that house rented for anything or not?

A. Well, it must have rented for something, but it was not considered, the lot being sold by the square foot with a house on it, which are usually not considered in such sales.

Q. That was the corner?

A. At the corner, or the lot adjoining that.
Q. Which corner?
A. The southwest corner, if I remember rightly.
Q. The corner lot would be worth more than the inside lot?
A. Yes, sir.
Q. The corner lot had two fronts?
A. Yes, sir; one on Second street and one on F street.
Q. How much would that affect or enhance the selling value?
WITNESS: Of the corner?
Mr. HENKLE: Yes.
A. As to the corner alone, about one-third. The corner
736 lot would have brought seventy-nine cents, while the inner lot would not have brought seventy-nine cents.
Q. Was that the only transaction you had in the vicinity?
A. I had a sale around on Second street.
Q. There was considerable enhancement of values between 1881 and 1883?
A. Not so much; it was gradual. In 1883 property began to get better, a great deal better, and it got so more rapidly than it did from 1876 to 1881.
Q. Do you remember when that public sale of the Ingersoll square south of the British minister's house took place?
A. I could not tell the year. I remember the sale.
Mr. MACKEY: That is about three or four miles from this property, is it not?
WITNESS: Yes, sir; it is fully three miles; fully.
Q. Was not that about the first indication of the advance in real estate in Washington after the depreciation following the year 1873?

Mr. MACKEY: I object to this as having nothing to do with the case.

A. Well, that was a large sale; the square was divided into lots, and it advertised as so many lots, being the whole square, as I remember, and naturally it attracted more attention than a single lot could possibly have. It may have been that by a great many that was an indication of enhancement in value simply be-
737–739 cause it was brought more extensively to their notice, but I cannot exactly say that was the commencement of the improvement.
Q. This locality on F street between First and Second streets northwest was occupied largely by colored people, was it not?
A. No, sir; there were colored people there, but there were a great many Irish working people there, too.
Q. On the alley in the rear was not the population almost entirely colored people?
A. Yes, sir.
Q. What would be the effect upon the value of property of that fact?
A. Well, property at about that price, it would not have much

effect; but property that went over seventy-five cents or up to a dollar and a dollar and a half, it would have an effect.

CHAS. C. DUNCANSON.

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(Adjourned.)

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740–742 In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 12761.

To S. S. Henkle, Esq., solicitor for defendants.

SIR: Take notice that by virtue of the commission to me directed by the supreme court of the District of Columbia, dated September 28, 1893, and at the request of F. H. Mackey, Esq., of solicitors for the complainant, I have this day fixed Saturday next, October 7, 1893, at the hour of noon of that day, to take testimony at the Central National bank, corner of 4th and Chestnut streets, and also at No. 700 Walnut street, in the city of Philadelphia, State of Pennsylvania, of such witnesses as may be offered under the terms of a certain stipulation in pursuance of which said commission was issued.

ALBERT HARPER,
Special Commissioner.

Service acknowledged this 4th day of October, 1893.

S. S. HENKLE,
Sol. for Def'ts.

743 The Central National Bank.

CITY OF PHILADELPHIA, PENNSYLVANIA, *October* 7, 1893.

* * * * * * *

William Post.

* * * * * * *

By Mr. MACKEY:

Q. Mr. Post, you are the second assistant cashier of the Central National Bank of Philadelphia, Pennsylvania, are you not?

A. I am.

Q. Will you please state whether Martha McIntire ever had an account with that bank; if so, when such account was opened, and please give the dates and amounts of deposits and the date and amounts of the checks or drafts against such deposits and the date when the account was closed.

A. There is an account opened in the name of Martha McIntire on the books of this bank on September 5, 1881, and closed December 2, 1882. The deposits were as follows: September 5, 1881, $500; May 20, 1882, $109; May 20, 1882, $6,210, making the total credits

to her account $6,819. The payments are as follows: July
744 19, 1882, $4,925; December 2, 1882, $1,894, making the total debits $6,819. This account shows when the moneys were drawn out of the bank. As we have not the checks or drafts themselves, we cannot give their dates.

Q. Mr. T. L. De Bow, the first assistant cashier of your bank, is at this time absent from this city, I believe?

A. Yes, sir.

Q. I show you a transcript or statement showing the account of Martha McIntire with the Central National Bank of Philadelphia, Pennsylvania; certified to by Mr. De Bow. Have you compared this statement with the books of the bank and find that it is a correct transcript of her account?

A. Yes, sir.

Mr. MACKEY: I here give that transcript of account in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 53.)

Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not know of anything else.

WILLIAM POST,
2d Ass't Cashier.

Subscribed and sworn to before me this 7th day of October, 1893.

——— ———,
Special Commissioner.

(Adjourned.)

745 Office of the Philadelphia Saving Fund Society.

CITY OF PHILADELPHIA, PENNSYLVANIA,
OCTOBER 7, 1893, SATURDAY—12.30 o'clock p. m.

Met pursuant to foregoing commission, notice, and subpœna.

Appearances: Franklin H. Mackey, Esq., of solicitors for the complainant (defendants not appearing in person or by counsel); also the examiner and special commissioner and—

G. Colesbury Purves.

* * * * * * *

Before testifying I produce and wish filed with this my deposition a letter from E. A. McIntire, and also a telegram purporting to be from Martha McIntire.

Mr. MACKEY: I here give in evidence that letter and telegram.

(NOTE.—And the same are herewith filed in evidence and marked respectively Exhibits A. H. Nos. 54 & 55.)

By Mr. MACKEY:

Q. What is your relation to the Philadelphia Saving Fund Society?

A. Secretary and treasurer.

Q. Please state whether your bank ever had an account with Martha McIntire. If so, when and what?

A. We had two accounts in the name of one Martha McIntire, which are now closed, and these statements which I produce are correct transcripts of those accounts taken from our books
746 and showing the amounts received and paid, respectively, and the times of such receipts and payments, being deposits Nos. 149,850 and 234,889.

Mr. MACKEY: I here *five* those transcripts of account in evidence.

(NOTE.—And the same are herewith filed in evidence and marked respectively Exhibits A. H. Nos. 56 & 57.)

Q. Did you ever have an account with one Sarah J. McIntire; if so, when and what?

A. We did have an account with one Sarah J. McIntire, being depositer No. 196,399, and I produce a correct transcript of that account from our books showing the amounts received and paid and the times of such receipts and payments.

Mr. MACKEY: I here give that transcript of account in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 58.)

Q. I will ask you when the last item on this transcript of account (Exhibit A. H. No. 58) was drawn out, by whom and how, and also the amount.

A. The account was closed on May 2, 1881, by the payment of $1,196.60 upon a power of attorney purporting to be given by Sarah J. McIntire to Martha McIntire, dated the 10th or 19th of April, 1881, and acknowledged the same day. I will correct that by saying that the date is April 19th, 1881. It is acknowledged
747 before Christopher Edie, a notary public, and purports to have been sealed and delivered in the presence of Edwin A. McIntire.

Q. Have you that power of attorney in your hand?

A. I have, and here produce it.

Mr. MACKEY: I here give the original of that power of attorney in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 59.)

Mr. MACKEY: Solicitor for the complainant here states that upon his return to Washington city, D. C., he will cause a photographic or photo-lithographic copy of said power of attorney to be made, and that by agreement of the counsel for the respective parties or by order of the court the original power of attorney will be returned to this bank, the special commissioner in the meantime preserving the original of said power of attorney for identification.

Q. Do you know, Mr. Purves, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not.

G. C. PURVES.

Subscribed and sworn to before me this 7th day of October, 1893.

ALBERT HARPER,
Special Commissioner.

(Adjourned.)

748 Health office, registration department, room 517, city hall.

CITY OF PHILADELPHIA, PENNSYLVANIA,
OCTOBER 7, 1893, SATURDAY—2 o'clock p. m.

Met pursuant to foregoing commission, notice, and subpœna.

Appearances: Franklin H. Mackey, Esq., of solicitors for the complainant (defendants not appearing in person or by counsel); also the examiner and special commissioner and—

JAMES V. P. TURNER, who, being produced as a witness of lawful age for and on behalf of the complainant, being first duly sworn, deposes and says:

By Mr. MACKEY:

Q. What relation do you hold to the registration department of the health office of the city of Philadelphia, in the State of Pennsylvania?

A. I am chief registration clerk.

Q. Have the records of your office any note of the death of Sally J. McIntire? And, if so, state what such records show.

A. Our records show that one Sally J. McIntire, a white female, thirty-two years of age, condition single, died on the 10th day of January, 1881, of pulmonary phthisis. E. M. Smith, M. D., residing at 842 North 8th street, signed the certificate of death. The place of birth is given as Philadelphia, Pennsylvania, and place of death 871 North 8th street, in said city of Philadelphia. Date of burial, January 14, 1881, and the place of burial as "Mt. Peace cemetery," in Philadelphia. The undertaker-, D. H. Bowen & Son, of Philadelphia.

749 Q. I will ask you whether the paper which I now hand you is a true and correct transcript of the record of the death of Sally J. McIntire as the same appears in your office?

A. It is.

Mr. MACKEY: I here give that transcript of record in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 60.)

Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not.

J. V. P. TURNER,
Chief Registration Clerk.

Subscribed and sworn to before me this 7th day of October, 1893.

ALBERT HARPER,
Special Commissioner.

(Adjourned.)

750 No. 813 South 8th Street,
City of Philadelphia, Pennsylvania,
October 7, 1893, Saturday—7 o'clock p. m.

Met pursuant to foregoing commission, notice, and subpœna.

Appearances: Franklin H. Mackey, Esq., solicitor for the complainant (defendants not appearing in person or by counsel); also the examiner and special commissioner and—

Clement R. Bowen.

* * * * * * *

By Mr. Mackey:

Q. What is your business and place of business?

A. Undertaker; at No. 813 South 8th street, Philadelphia, Pennsylvania.

Q. Was that your place of business in January, 1881?

A. Yes, sir.

Q. What was the name of your firm at that time, and were you then a member of it?

A. The name of the firm was then David H. Bowen & Son, the same as it is now. I am now and was at that time a member of the firm.

Q. Did you officiate as undertaker at the funeral of Sally J. McIntire on January 14, 1881?

A. Yes, sir; our ledger shows that her brother, Edwin McIntire, ordered the burial.

Q. Showing you a certified copy from the health office of the city of Philadelphia, Pennsylvania, of the record showing
751 the death of one Sally J. McIntire (being Exhibit A. H. No. 60), I will ask you whether the name thereon of E. H. Bowen & Son, undertaker-, is meant to indicate your firm?

A. Yes, sir.

Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of

this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not.

CLEMENT R. BOWEN.

Subscribed and sworn to before me this 7th day of October, 1893.

ALBERT HARPER,
Special Commissioner.

(Adjourned.)

752 OCTOBER 12, 1893.

* * * * * * *

HARTWELL JENNISON, who, being recalled and resworn, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. Have you the note which you made to Emma Taylor and which was surrendered to you when you conveyed this property to her?

A. I have not.

Q. Did you ever have it?

A. Presumably so.

Q. If you had it you have lost it?

A. I presume so, supposing that I had no further use for it.

Mr. HENKLE: Was this not all gone into in chief?

Mr. MACKEY: It is in rebuttal of your testimony.

Mr. HENKLE: What does it rebut?

Mr. MACKEY: On page 326 of the record of testimony in the Pryor case Mr. McIntire says that he returned the note to Mr. Jennison. Now, I am asking Mr. Jennison what he did with that note.

Q. Did you ever receive from Mr. McIntire any rents on account of this Pryor property?

753 A. I am positive that I never received a dollar, with the exception of the one hundred dollars tendered after the quit-claim deed.

Mr. HENKLE: I object to that question and answer as not being in rebuttal.

Mr. MACKEY: Mr. McIntire says, on page 350 of the record of testimony, that he paid Mr. Jenison the rent.

Q. Mr. Jenison, Mr. McIntire says that the deed from himself to you, which he made in pursuance of the foreclosure sale of the Pryor property, was not recorded because you would not give him the money to record it. Did you ever refuse to give him any money to record that deed, or did he ever ask you for any money for that purpose?

A. I have no distinct recollection in the matter. I feel quite con-

fident, however, that if he represented that it was necessary for me pay that fee I should not have refused.

Q. On page 353 of the record of testimony he says that he turned the deed over to you, and that you brought it back to him. Did you ever see that deed?

A. I presume I did. It was placed in his custody awaiting further negotiations.

Q. Further negotiations in respect of what?

A. Well, at the time of the sale, of course, there was no cash consideration on my part, and it was represented that the tax improvements must be paid at once, and I told Mr. McIntire that I was not prepared to make the payment myself; that if there was a
754 forced sale in the matter I would sooner relinquish my right and title and forfeit the whole thing; but I suggested to him that possibly he might secure a loan and extend the transaction, and that the property at the end of a year or so might be more valuable, so that I could be reimbursed, and I suggested to Mr. McIntire that with his facilities, being in the real-estate business, he might perhaps secure that loan. He said that he would take it into consideration and see what he could do about it. Shortly after that he said that he obtained the money from this Emma Taylor, and then I gave my note and trust for it.

Q. And then you made the note to Emma Taylor secured by the deed of trust?

A. Yes, sir.

Q. Do you remember how the Pryor sale of foreclosure came about, or whether any representations were made to you by Mr. McIntire as to the situation of the property in respect of taxes, and what ought to be done? If there was any such conversation with Mr. McIntire, will you please state what it was?

A. When Mr. Pryor refused to make any further payments the only alternative seemed to be to have a sale of the property.

Q. Did Mr. Pryor tell you that he would not pay, or was that what Mr. McIntire told you?

A. McIntire represented that. I never saw Mr. Pryor.

Q. Did Mr. McIntire at that time tell you that there were any taxes upon the property which had to be paid?

A. Yes, sir; these improvement taxes.

Q. You may state, if you will, the conversation that was had previous to the sale as to these improvement taxes and what
755 had to be done, whether you were asked to pay them, and state whatever the conversation was.

Mr. HENKLE: Do you claim that is in rebuttal?

Mr. MACKEY: Yes; I do.

Mr. HENKLE: Of what?

Mr. MACKEY: Rebuttal of Mr. McIntire.

Mr. HENKLE: Question objected to as not being in rebuttal of anything said in the testimony on the part of the defendant.

A. Mr. McIntire said that it was necessary that these improve-

ment taxes be paid at once; otherwise the District would foreclose the property itself.

Mr. HENKLE: Answer objected to for the same reason.

Q. In consequence of that, what was done?

A. In consequence of that the sale was ordered, inasmuch as I was not prepared to raise the money myself.

Mr. HENKLE: Do you mean that you ordered the sale yourself?

WITNESS: I believe I did.

Q. At the time you made the loan, or rather at the time the loan was made to you by Emma Taylor through Mr. McIntire's agency and you gave your note, was there any understanding with Mr. McIntire that he should endeavor to find a purchaser for the property before the note fell due?

756 Mr. HENKLE: Question objected to as not being in rebuttal, and also because leading.

A. It was.

Q. You may state, Mr. Jenison, if you please, a little fuller, if you can, in respect of that understanding as to the making of the note by you and your understanding with Mr. McIntire that he would endeavor to find a purchaser for the property before the note fell due, if there was any such conversation between you and him in respect of it.

A. When the loan was made Mr. McIntire said that if it was possible to make a disposition of the property in the meantime he would do so.

Mr. HENKLE: Same objection.

Q. I call your attention to this letter (Exhibit A. H. No. 6), dated Treasury Department, register's office, April 13, 1882, addressed to E. A. McIntire, and which reads as follows:

"DEAR SIR: I take it for granted that you have not effected any trade or exchange for my lot, and presume there is not much prospect of making a sale before maturity of the trust deed. I do not think there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on; besides, I am not in a situation to carry it. I shall doubtless have to submit to a sacrifice by forced sale, but may realize a little over the incumbrance should there be any competition in bidders. Unless you think you can do better, I wish you would advertise and do the best you can in its disposition. If you happen to be up
757 to the Treasury, please call. I have looked into your office several times, but found you "*non est.*"

Truly yours, H. JENISON."

You wrote that letter, did you not?

A. Yes, sir.

Q. You say here, "I take it for granted that you have not effected any trade or exchange for my lot and presume there is not much prospect of making a sale before maturity of the trust deed." You

may state whether or not that refers to the understanding which you had with Mr. McIntire that he would endeavor to make a sale or trade of the lot for you.

A. Certainly.

Mr. HENKLE: Objected to as not being rebuttal.

Q. Had he made any report to you in the interval between the making of the note and the writing of this letter (Exhibit A. H. No. 6 in this case) as to his ability to find a purchaser for this property or make an exchange and what the prospects were for doing so?

A. I think he had stated at times that he had not found any purchaser.

Q. Did he give any reason as to why he was unable to do so?

A. Nothing further than that the property was not available.

Q. Eligible property, you mean?

A. Yes, sir; that parties were not willing to assume the incumbrance, and for that reason he could not make a sale.

Q. Did you have any idea or knowledge as to the value of this property other than you had obtained from Mr. McIntire's representations to you as to its value?

Mr. HENKLE: Objected to as not being rebuttal.

758 A. Not at all.

Mr. HENKLE: Answer objected to for the same reason.

Q. Did you make any inquiries yourself?

A. I did not. I was engrossed in my office duties and took no interest in real-estate matters, but relied implicitly upon what Mr. McIntire told me about real-estate matters, supposing that he was better posted in that line.

Q. From the statements which he made to you in regard to the property you became possessed of the idea that it was not a very valuable piece of property?

Mr. HENKLE: Objection to as leading and not in rebuttal.

A. I did.

Mr. HENKLE: Same objection to the answer.

Q. In this letter, Mr. Jenison, you say, "I wish you would advertise and do the best you can in its disposition." By that I suppose you meant that you wanted him to sell the property at auction?

Mr. HENKLE: Objected to; the letter speaks for itself, and he is not——

Mr. MACKEY (interposing): Question withdrawn.

Q. You say in this letter (Exhibit A. H. No. 6 in this case), "I shall doubtless have to submit to a sacrifice by forced sale, but may realize a little over the incumbrance should there be any com-
759 petition in bidders," and then you go on and say, "I wish you would advertise and do the best you can in its disposition." What did you mean by that?

Mr. HENKLE: Objected to. The letter speaks for itself, and what the meaning of the writer was is immaterial, and, moreover, it is not rebuttal.

A. I had become convinced that was the only way to clear myself, because as the note was nearly matured and there was no other alternative, I thought it better to submit to a sacrifice and have the matter disposed of.

Q. There was not any advertisement and auction sale of this property, but shortly afterwards you conveyed the property to Emma Taylor for her note. Please state how that change of program came about.

Mr. HENKLE: Objected to as not in rebuttal.

A. I do not know that there was any particular change of program.

Mr. HENKLE: I object, further, that the whole of this is immaterial to the issue.

Q. Well, in this letter (Exhibit A. H. No. 6 in this case) you asked Mr. McIntire to advertise and sell the property at forced sale?

A. Well, I probably did that upon the supposition that that would be the course that would be taken.

Q. In this letter (Exhibit A. H. No. 6 in this case) you asked Mr. McIntire to come to your office, if he happened to be up at the
760 Treasury, as you had called several times at his office but could not find him in. Did he come to see you in pursuance of that letter?

A. I do not recollect.

Q. Did he see you between the time this letter (Exhibit A. H. No. 6 in this case) was written and your conveyance to Emma Taylor in consideration of her surrender of the note?

A. I have no distinct recollection in the matter.

Q. You have no recollection whether he saw you or not?

A. No, sir.

Q. Do you remember Mr. McIntire furnishing you with an abstract of the title to the property?

A. I do not.

Mr. HENKLE: Objected to as immaterial and not rebuttal.

Mr. MACKEY: Yes, it is rebuttal. On page 439 of the record of testimony in this case Mr. McIntire says that he furnished an abstract of the title of this property to Mr. Jenison.

Q. On page 448 of the record of testimony in this case Mr. McIntire says that he reported to you that the roof of the shanty on the Pryor place was blown off, and that he had to repair it. Do you remember any such report as that to you?

A. I am quite positive that he never made any such statement as that.

Mr. HENKLE: Question and answer objected to as immaterial and not rebuttal.

Q. Mr. Jenison, when you conveyed this property to Emma Taylor for the $425, had you then any knowledge or belief, de-
761 rived from any other source than from Edwin A. McIntire, as to whether that property was worth more than the amount of the note which you owed Emma Taylor?

A. I knew nothing about the value of the property.

Mr. HENKLE: Objected to as immaterial and not rebuttal.

Q. Upon whose suggestion was it that the property was conveyed to Emma Taylor for the note instead of being sold at auction as you had suggested in that letter?

Mr. HENKLE: Objected to as immaterial to the issue and not rebuttal.

A. I do not know that I had any suggestion from any one. The sale was requested on my part from a conviction that it was necessary.

Q. From a conviction that the property was worth no more than that?

A. That it was necessary to satisfy that claim.

Q. Necessary to satisfy the claim of Emma Taylor?

A. Yes, sir.

Q. Was she pressing for her claim at that time?

A. I do not know about that; the note was maturing, and I considered it better to make that suggestion than to attempt to renew the note or carry it any further.

Q. I believe you have heretofore stated that you never saw Emma Taylor at all?

A. No, sir.

Q. All the negotiations were done through Mr. "Edwin
762 A. McIntire"?

A. Yes, sir.

Cross-examination.

By Mr. HENKLE:

Q. You had made a loan upon this property before you had any connection with Mr. Edwin A. McIntire?

A. No, sir; not that I know of.

Q. Had you not made a loan upon this property before Edwin A. McIntire had anything to do with it?

A. Yes; I suppose so.

Q. Then, Mr. Edwin A. McIntire did not advise you when you first made this loan as to the value of the property, did he?

A. No, sir.

Q. And you did not act upon his advice at all?

A. I think not.

Q. He had nothing to do with it at that time?

A. No, sir.

Q. You had made your loan before you knew him, had you not?
A. Yes; I suppose so.
Q. Then, what do you mean by saying that you got your idea of the value of the property from Mr. McIntire?
A. I only had the value of the property after Mr. McIntire was the sole trustee in the second transaction.
Q. What idea did he give you of the value; you had connected yourself with the property and made your loan upon it before you knew him at all, had you not?
A. I knew nothing of the value of the property until the refusal of Pryor in this second transaction to make payment,
763 and then the payment of these improvement taxes was made important.
Q. Did Mr. McIntire ever tell you what the value of the property was?
A. He represented that it was of nominal value in the location in the eastern part of the city.
Q. What do you mean by nominal value?
A. Depreciated; that real estate at that time had depreciated in value in that part of the city.
Q. Was it not true?
A. I did not know anything about it.
Q. Did you not make any inquiry of anybody else?
A. No, sir.
Q. You were satisfied that the property was not of such sufficient value to yield you anything above the amount of the note?
A. According to Mr. McIntire's representations.
Q. You was satisfied that was the fact?
A. I was satisfied with his statement as being correct.
Q. You believed it to be true?
A. Yes, sir; I took him to be a man of his word.
Q. Did you ever find out that it was not true?
A. I never made any inquiry in the matter at all.
Q. You do not know but what it was true?
A. I did not know anything as to what the value was at that time.
Q. You do not undertake to say upon oath that Mr. McIntire made any misrepresentations to you at all?
A. I was not aware that he was making any misrepresentations.
764 Q. Was he not dealing with you apparently fairly?
A. Apparently.

Mr. MACKEY: If you want it to go on the record I will state that Mr. McIntire dealt apparently in the fairest manner.
Mr. HENKLE: Never mind, Mr. Mackey.

Q. You never suspected anything else until it was put into your head by Mr. Mackey?
A. I did not.

Mr. MACKEY: I object to the form of that question as not founded

upon anything in the testimony and not proper to be asked; it is not truthful and it is known not to be truthful by the counsel.

Q. You never tried to sell the property yourself?
A. No, sir.
Q. How long have you lived in this city?
A. I have been here most all my life.
Q. What is your age?
A. I am seventy-three years of age.
Q. And you have lived here nearly all your life?
A. Yes, sir.
Q. Were you chief of a division in the Treasury Department at that time?
A. Yes, sir.
Q. And had been for a long time?
A. Some fifteen years.
Q. Prior to that?
765 A. Yes, sir.
Q. You knew many business men in this city, did you not?
A. Certainly.
Q. You had a general acquaintance in the city?
A. Yes, sir.
Q. You considered yourself capable of transacting your own business, did you not?
WITNESS: In what respect?
Mr. HENKLE: In every respect.
A. Why, I hope so.
Q. You have said, in answer to a question of Mr. Mackey, that if Mr. McIntire had come to see you and said that it was necessary to make any expenditure for recording the deed you would certainly have advanced the money. Did not you heretofore, in your testimony, say that you declined making any further expenditures on account of that property, and did you not tell Mr. McIntire that you did not want to spend anything more on account of the property?
A. I did.
Q. You say this afternoon in your testimony that you placed your deed from Mr. McIntire as trustee to you in his hand until further negotiations. When you were examined before, you said, on page 35 & 46 of the record of testimony in this case, "I suppose I placed it (the deed) in his (McIntire's) hands to be recorded. I have no definite recollection about —; I could not say positively whether I placed it in his hands or not." What do you say to that now? Was that true?
766 A. Why, I know the deed was put in his hands. He was the custodian of the deed.
Q. How did you come to say in your former testimony, "I could not say positively whether I placed it in his hands or not"? Was that your recollection when you testified before?
A. Well, I do not know about that.
Q. Well, was that true or not?

A. I had no definite recollection in the matter, but presumably the deed was placed in his hands.

Q. You have no definite recollection about it now, have you? It is a supposition of yours, and you have no recollection about it?

A. I am confident the deed was put in his hands as custodian.

Redirect examination.

By Mr. MACKEY:

Q. Mr. Jenison, you were asked if you had made the loan to Mr. Pryor previous to this loan of $450 that was secured by the deed of trust in which Mr. McIntire was the sole trustee. I want to ask you, in respect of that, whether that first loan was not represented by a note given to you by B. H. Warner, of the firm of B. H. Warner & Co.

A. I do not remember anything about the note. I simply loaned the money upon the trust deed, and that is about all I recollect of it.

Q. Who negotiated that transaction for you?

A. Mr. McIntire's brother at that time—Mr. Henry McIntire.

767 Q. You gave the money to Mr. McIntire's brother, Henry McIntire, to invest for you; is that it?

A. Yes, sir.

Q. Did you see Mr. Pryor yourself?

A. No, sir.

Q. Did you see the property in which the money was invested?

A. No, sir.

Q. You simply gave the money to Mr. McIntire's brother, Henry McIntire, and he invested it and brought you the note?

A. Yes, sir.

Q. As a note secured by a deed of trust upon a piece of property?

A. Yes, sir.

Q. Did you ever see the property upon which the note was secured?

A. No, sir; I never looked at the property.

Q. And you never saw the Pryors?

A. No, sir.

Q. Do you remember the fact that the note was made payable to Mr. Emmons, who indorsed it to you?

A. I have no recollection as to the nature of the note at all.

Q. Now, you were asked as to your knowledge of the value of this property at the present time. You do not profess to be an expert as to the value of real estate, do you?

A. No, sir.

Q. Do you know anything about the value of real estate?

A. Not at all. I never interested myself in the matter at all.

768 Q. Except as you heard from other persons, you have no knowledge as to the value of this property or any other property in the city?

Mr. HENKLE: Objected to as extremely leading.

A. No, sir.

Recross-examination.

By Mr. HENKLE:

Q. You say that you made this transaction through Mr. McIntire's brother. What was his name?
A. Henry McIntire.
Q. What was his business at that time?
A. He was a clerk in the same office with myself.
Q. Under you?
A. Yes, sir.
Q. Did he have any business connection with Mr. Edwin A. McIntire at that time?
A. I do not know how that was.
Q. You do not know that he had?
A. No, sir.
Q. You did not know Edwin A. McIntire at that time at all?
A. No, sir; I first met Mr. Edwin A. McIntire after the second deed of trust was given.
Q. Was Henry McIntire dead at that time?
A. I do not recollect when he died.

H. JENISON.

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(Adjourned.)

769 OCTOBER 24, 1893.

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MARY C. PRYOR, who, being recalled, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. When did your husband, Thomas Pryor, die?
A. Going on five years—four years ago the fourth of last July.

Mr. HENKLE: Cross-examination waived.

MARY C. PRYOR.

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Mr. MACKEY: I here give in evidence this slip of paper, being a receipt from Edwin A. McIntire, testified to by him, and marked for identification "M. & B. No. 3."

(NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 61.)

770 ANNIE LAURA GALLIHER, being recalled and resworn, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. Did you know Sarah J. McIntire, a sister of Edwin A. McIntire?
A. Yes, sir.
Q. What relation are you to her?
A. She was my aunt.
Q. Is she living or dead?
A. She is dead.
Q. Were you at the funeral?
A. Yes, sir.
Q. When did she die?
A. I do not remember the date of her death, but it was some time in January, 1881.
Q. Where was she buried from?
A. She was buried from her mother's residence, No. 871, I think, North Eighth street, in the city of Philadelphia, in the State of Pennsylvania.

Mr. HENKLE: Cross-examination waived.

ANNIE L. GALLIHER.

* * * * * * *

771 GEORGE W. DUNN, being recalled, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. You have heretofore testified in these cases?
A. Yes, sir.
Q. Look at the paper which I now hand you, dated April 19, 1881, purporting to be a power of attorney executed by Sarah J. McIntire to Martha McIntire, witnessed by Edwin A. McIntire, and acknowledged before Christopher Edie, a notary public in and for the District of Columbia, on the same date, and state whether you ever saw that paper before.
A. Yes, sir; I have seen this paper before.
Q. For what purpose did you have it?
A. To photograph it.
Q. Have you a photograph of it?
A. Yes, sir.

Mr. HENKLE: I object to the question and answer and to the introduction of such photograph upon the ground, first, that it is not rebuttal; and, secondly, that it is immaterial and irrelevant.

Q. Did you photograph it?
A. Yes, sir.

Q. And is this photograph of it, which you now produce, the same size of the original of said power of attorney which I have shown you here today?

A. Yes, sir.

772 Q. Look at these three signatures of Emma T. McIntire, which I hand you, one being subscribed to her testimony on the 10th day of April, 1893, in the case of Hayne *vs.* McIntire, being equity cause No. 13177, in the supreme court of the District of Columbia; one subscribed to her testimony on the 29th day of May, 1893, in the case of Brown *vs.* McIntire, being equity cause No. 12977, in the supreme court of the District of Columbia, and the other subscribed to her testimony on the 10th day of April, 1893, in the case of Pryor *vs.* McIntire, being equity cause No. 12761, in the supreme court of the District of Columbia, and state whether you photographed those signatures and where they are.

A. Yes, sir; I photographed them. The signature of Emma T. McIntire subscribed to her testimony in the case of Brown *vs.* McIntire on the 29th day of May, 1893, is No. 6 on this card of photographic signatures which I now produce. The signature of Emma T. McIntire subscribed on the 10th day of April, 1893, to her testimony given in the case of Hayne *vs.* McIntire, being equity cause No. 13177, in the supreme court of the District of Columbia, is No. 5 on this card of photographic signatures, and the signature of Emma T. McIntire subscribed on the 10th day of April, 1893, to her testimony in the case of Pryor *vs.* McIntire, being equity cause No. 12761, in the supreme court of the District of Columbia, is No. 4 on this card of photographic signatures.

Mr. HENKLE: I object to the question and answer upon the ground that they are not in rebuttal, and, further, that these photographs are not original papers and not competent as evidence, but
773 are incompetent and irrelevant.

Q. Look at this signature of Emma T. McIntire affixed as a witness to the paper marked Exhibit A. H. No. 18 in the case of Pryor *vs.* McIntire, being equity cause No. 12761, in the supreme court of the District of Columbia, and purporting to be a contract in duplicate between Medford & Waldron and Martha McIntire, and state whether you photographed that signature; and, if so, where the photograph is.

Mr. HENKLE: Same objection.

A. Yes, sir; I photographed that signature, and is marked No. 3 on this card of photographic signatures.

Q. Look at this signature of Emma T. McIntire to a paper purporting to be a letter dated November 27, 1885, signed by Emma T. McIntire, directed to Edwin A. McIntire, endorsed, "Renunciation of Emma T. McIntire, one of the executors," and filed November 20, 1885, in the estate of Adeline McIntire, deceased, in the office of the register of wills of the District of Columbia, and state if you photographed that signature; and, if so, where it is to be found.

Mr. HENKLE: Same objections, and also that it is a foreign paper

imported into the case for the purpose of comparison of handwriting, and is therefore incompetent and contrary to law.

A. Yes, sir; I photographed that signature, and it is marked No. 1 on this card of photographic signatures.

Q. Look at this signature of Emma T. McIntire to the
774 paper endorsed, "Renunciation of Emma T. McIntire as an executrix," filed December 11, 1885, in the matter of the estate of Adeline McIntire, in the office of the register of wills in the District of Columbia, and state whether you photographed that signature; and, if so, where it is to be found.

Mr. HENKLE: Same objections to question and answer.

A. Yes, sir; I photographed that signature, and it is marked No. 2 on this card of photographic signatures.

Q. Look at the signature of William Helmick to the certificate of acknowledgment on the deed dated April 25, 1881, purporting to be between Barbara Brown and Emma Taylor, of the one part, and Martha McIntire, of the other, marked Exhibit A. H. No. 1 in the case of Brown *vs.* McIntire, equity, No. 12977, in the supreme court of the District of Columbia, and state whether you photographed that signature; and, if so, where it is to be found.

Mr. HENKLE: Objected to as not being in rebuttal and incompetent and irrelevant.

A. Yes, sir; I photographed that signature, and it is marked No. 8 on this card of photographic signatures.

Q. Look at the signature of William Helmick to the acknowledgment of the deed dated May 31, 1884, purporting to be between Emma Taylor and Martha McIntire, being marked Exhibit A. H. No. 14 in the case of Pryor *vs.* McIntire, equity, No. 12761, in the supreme court of the District of Columbia, and state whether
775 you photographed that signature; and, if so, where it is to be found.

Mr. HENKLE: Objected to as not being in rebuttal and because the original paper itself is in evidence.

A. Yes, sir; I photographed that signature, and it is No. 7 on this card of photographic signatures.

Q. Look at the signature of William Helmick to the certificate of acknowledgment to the deed dated May 14, 1883, purporting to be between Emma Taylor and Alfred Brown, being Exhibit A. H. No. 12 in the said case of Pryor *vs.* McIntire, equity, No. 12761, and state whether you photographed that signature; and, if so, where it is to be found.

Mr. HENKLE: Same objection.

A. Yes, sir; I photographed that signature, and it is No. 10 on this card of photographic signatures.

Q. Look at this signature purporting to be the signature of Annie M. Ackerman to a deed dated September 6, 1884, between Annie M. Ackerman and Martha McIntire, being Exhibit A. H. No. 7 in the

case of Ackerman *vs.* McIntire, equity, No. 12798, in the supreme court of the District of Columbia, and state whether you photographed that signature; and, if so, where it is to be found.

Mr. HENKLE: Same objection.

A. Yes, sir; I photographed that signature, and it is No. 12 on this card of photographic signatures.

Q. The signature of William Helmick, just below that of
776 Annie M. Ackerman, on the same paper, state whether you photographed that signature and where it is to be found.

Mr. HENKLE: Same objections.

A. Yes, sir; I photographed that signature, and it is No. 13 on this card of photographic signatures.

Q. And also the signature of William Helmick to the acknowledgment of that deed?

A. Yes, sir; I photographed that signature, and it is No. 14 on this card of photographic signatures.

Mr. HENKLE: Same objections to question and answer.

Q. State whether you photographed this signature of Annie M. Ackerman to a letter dated Camden, New Jersey, January 29, 1882, marked Exhibit A. H. No. 1 in the said case of Ackerman *vs.* McIntire; and, if so, where it is to be found.

A. Yes, sir; I photographed that signature, and it is No. 15 on this card of photographse signatures.

Mr. HENKLE: Same objections.

Q. State whether you photographed this signature of Annie M. Ackerman to a letter dated February 3, 1882, purporting to have been written by Annie M. Ackerman to Edwin A. McIntire, and marked Exhibit A. H. No. 3 in the said case of Ackerman *vs.* McIntire; and, if so, where it is to be found.

Mr. HENKLE: Same objections.

A. Yes, sir; I photographed that signature, and it is No.
777 17 on this card of photographic signatures.

Q. State whether you photographed this signature of Annie M. Ackerman which is indorsed upon a check dated April 28, 1882, and marked Exhibit A. H. No. 4 in said case of Ackerman *vs.* McIntire; and, if so, where it is to be found.

Mr. HENKLE: Same objections.

A. Yes, sir; I photographed that signature, and it is No. 16 on this card of photographic signatures.

Mr. HENKLE: Cross-examination waived.

GEO. W. DUNN.

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Mr. MACKEY: I here give in evidence the photographic copy of this power of attorney which the witness Dunn has just referred and testified to.

Mr. HENKLE: To the admission of which, as well as to the original thereof offered in evidence as Exhibit A. H. No. 59, at page 709 of the record in this case, I object as incompetent, irrelevant, and immaterial.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 62.)

778 (NOTE.—It is agreed between solicitors for the respective parties hereto that the photographic copy (Exhibit A. H. No. 62) of said power of attorney (which has heretofore been filed in evidence as Exhibit A. H. No. 59, at page 709 of the record in this case) shall be considered and remain in evidence in lieu of the original thereof, and that the said original power of attorney (Exhibit A. H. No. 59) may be withdrawn from the files of office of the clerk of the supreme court *if* the District of Columbia, agreeably to an order of said court, and returned by the commissioner to the Philadelphia Savin- Fund Society, in the city of Philadelphia, Pennsylvania, from whence it was obtained.)

Mr. MACKEY: I also give in evidence the photographic card of signatures which the witness Dunn has just referred and testified to.

Mr. HENKLE: To the admission of which I object as incompetent, irrelevant, and immaterial.

(And the same is herewith filed in evidence and marked Exhibit A. H. No. 63.)

NOTE.—If upon examination of the records of testimony in these various cases it shall be found that through inadvertence, owing to the alternate and simultaneous manner in which the bulk of the testimony was taken in these various cases, there has not been formally offered in evidence the various papers from the probate court of the District of Columbia and the record of testimony and exhibits in the case of William E. McIntire *vs.* Edwin A. McIntire, equity, No. 10745, in the supreme court of said District, and which have been repeatedly referred an- testified to in these various

779 cases, then it is here understood and agreed between the solicitors for the respective parties in these series of cases that said papers and records shall be produced, referred to, and considered as though formerly offered in evidence, subject, however, to all objection as to their admissibility, competency, relevancy, or materiality.

ALBERT HARPER,
Examiner in Chancery.

(Adjourned.)

780 NOVEMBER 9, 1893.

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S. S. HENKLE: As to the testimony taken recently in Philadelphia on October 7, 1893, the notice was to take testimony at the Central National bank and also at No. 700 Walnut street, at 12 o'clock m., in the city of Philadelphia, Pennsylvania. Mr. Mackey stated before he went there to take the testimony that he would take no other testimony than that of the bank officers and at no other place. When in Philadelphia he took testimony, as appears from

the return of the examiner, at 2 o'clock p. m., at the health office, in the city hall, of James V. P. Turner, and at 7 p. m., at No. 803 South Eighth street, of Charles R. Bowen. I object to the testimony of these two witnesses as not being covered by the notice, we having had no notice to appear at either of those places, and I now give notice that I shall ask the court to strike out those depositions from the record of testimony; but if they should be admitted they are objected to upon the ground that they are incompetent and irrelevant and not in rebuttal of anything that was testified to on the part of the defendants.

Mr. MACKEY: Solicitors for the complainant say that they know of no arrangement with solicitors for the defendants in regard to whose testimony was to be taken in Philadelphia. The appointment of the examiner was to take oral testimony on be-
781–784 half of both the complainant and the defendant-, and the notice fully covered the taking of the testimony of those witnesses, and that the solicitor for the defendants did not leave the city of Washington, as he knows, and did not intend to be present at any of those sessions.

ALBERT HARPER, *Examiner.*

(Adjourned.)

785 *Testimony for Defendants in Surrebuttal.*

MARCH 1, 1894.

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EDWIN A. MCINTIRE, being recalled (in surrebuttal) and resworn as a witness of lawful age for and on their behalf, deposes and says:

Direct examination.

By Mr. HENKLE:

Q. You and I have gone over the papers and testimony in this case of Pryor *vs.* yourself and others and have decided upon the points about which you are to be examined in surrebuttal, and you prepared a memorandum of the points to which I desire to call your attention. Will you take that memorandum and, without further questions, go on and state what you desired to say by way of surrebuttal?

Mr. MACKEY: I object to this mode of examining this witness. The memorandum is put into the hands of a witness and it, of course, is leading and suggestive to him of what his testimony should be, and it is therefore an irregular and inadmissible way of examining the witness.

Mr. HENKLE: A memorandum was made by Mr. McIntire; if you want to take the time we will go over it *seriatim*.

WITNESS: There are one or two matters in which I want to correct my testimony.

Q. State, Mr. McIntire, how the keys of the house No. 108 F

street northwest, known as the Pryor property, came to be,
786 after the sale, in the possession of Mr. Pryor.

A. Mr. Pryor handed the keys to me, not alone of the shed or office, as Mrs. Pryor calls it, but also of the gates to the lot. I remember the keys quite well because they were tied together with a watch chain.

Q. When was that?

A. That was when he vacated the premises. Subsequently Mr. Pryor called upon me and stated that he had lost something, I think a file, on the premises, and he borrowed the keys from me to obtain it, and that was the way the keys happened to be in the hands of Mrs. Pryor.

Q. The keys were given to you at what time?

A. When he vacated the premises, and they were in my custody some time.

Q. On page 452 of the record in this case you say, "I have no recollection of the date you mention. I have kept the accounts in the name of my sister, Martha McIntire, since the time the deed was made to her. I do not think it was 1882." Do you desire to make any explanation of that?

Mr. MACKEY: I object to this as not being proper surrebuttal and shall move the court to strike it out.

A. I wish to say this, that the accounts referred to in the book which I presented here upon call of Mr. Mackey and which he declined to receive was the account to which I referred in my testimony.

Q. Mrs. Pryor testified that she was standing at the window of the office, I believe, at the time of the sale, and she says it was ten feet back from where the sale was taking place. What have you to say as to that?

787 A. She first said that she stood at the window of her house, but in her rebuttal testimony she said that she stood in the window of the office. The office to which she alludes was in the rear of the lot some eighty feet from F street. Between that office or shanty and the front of the lot quite a number of cords of pine wood were piled up. The only window to that office or shed looked toward the alley, and it was a matter of physical impossibility for any one to see from that window in the direction of F street.

Mr. MACKEY: Mrs. Pryor says—well, never mind that.

WITNESS: I wish to add this fact, that I recollect quite well that the keys of the premises were in my hands, and nobody occupied the office at the time of the sale. The sale was on the F-street front of the lot.

Q. Mr. Medford says in his rebuttal testimony that you told him the work was being done on those houses for a lady in Philadelphia; that the money was coming from a lady in Philadelphia. What have you to say as to that?

A. I did not tell him that, but, if I had told him, it would have

been the truth, very likely, because my sister, Martha McIntire, was from time to time in Philadelphia. What I did tell him was that it was being done for a Philadelphia lady who was accustomed to Philadelphia houses. I meant to lead him to infer that she knew what a good-style house was. I thought there were good workmen in Philadelphia; better, as a rule, than here.

Q. Mr. Medford further said that the copy of the contract which we had produced and put in evidence as Exhibit A. H. No. 18 in this case, being the contract between your sister, Martha McIntire, and Messrs. Medford & Waldron, was the one that he had originally, and that your sister Martha had not signed it at all. What have you to say as to that?

788

A. I think that statement is ridiculous on the face of it—that a contractor should hold a paper signed only by himself requiring him to do a certain amount of work. The contract was signed in duplicate; one copy was retained by my sister Martha, which is the copy I produce and is marked as Exhibit A. H. No. 18 in this case, and the other copy was handed to him and has never been in my possession since.

Q. The copy that you produced was whose copy?

A. The copy I produce (Exhibit A. H. No. 18 in this case) was the copy I procured from my sister Martha and the one handed to her directly after it was signed.

Q. State whether or not any changes were made in it since it was originally made.

A. Not any changes made, to my knowledge. I believe it to be the same paper as originally written.

Q. Mr. Medford also testified that he thought the property belonged to you. What have you to say to that?

A. Well, he says that I told him that it did not belong to me. I never told him it belonged to me. I told him that it did not belong to me. It never was assessed in my name. I never claimed ownership to it. I never represented to the workmen or to any one that I owned it, but, on the contrary, I told every one to whom I said anything on the subject that it was my sister's property.

Q. Did you say which sister?

A. My sister Martha.

789 Q. Mr. McIntire, how has that property since 1882, the time when your sister purchased it, been assessed?

Mr. MACKEY: Objected to because it is a matter of record as to how the property has been assessed and better evidence than that of the witness as to that fact.

A. It has never since 1881 been assessed in any other names than that of Mary C. Pryor, Emma Taylor, or Martha McIntire.

Q. Mr. Medford said in his examination, when first called as a witness, that your sister Martha seemed as if she was the owner, and subsequently, in his rebuttal testimony, he says that she acted more like a disinterested party, and he also says that she said nothing

about the concreting of the cellar or about the pump in the alley. What have you to say as to that?

A. She went to the houses and criticised quite a number of things about the premises. He argued with her against the propriety of concreting the cellar, and she told him that she would insist upon having it done——

Mr. MACKEY (interposing): I object to the witness stating what Miss McIntire said; she can state what she said, but she cannot make testimony for herself in this way.

Mr. HENKLE: This testimony is offered for the purpose of contradicting the witness Medford, who said that Miss Martha McIntire acted as though she was a disinterested party.

Mr. MACKEY: Let the witness simply say that she did not say so; that will be sufficient.

WITNESS (continuing): He also reminded her that he could not put the sewer in the houses through the alley without going
790 to an unusual expense by running the pipe to First street, and she compromised the matter with him by allowing him to put a driven pump in the alley. She acted all the way through as the owner.

Mr. MACKEY: All this is objected to on surrebuttal.

Q. Did she give any direction as to the houses?

A. She gave general directions as to all the work in the houses.

Q. Whether she gave directions in the presence of Mr. Medford or not.

A. It was to Mr. Medford that she gave directions in my presence.

Q. Mr. Medford says in his rebuttal testimony that he never employed Mr. Williamson to bring suit for him. What have you to say as to that?

A. I have a letter written by Mr. Williamson and signed by Medford & Waldron, dated April 14, 1887.

Mr. MACKEY: I object to this testimony as being improper on surrebuttal, the attention of the witness Medford not being called to the letter at all.

Mr. HENKLE: Let me see the letter.

WITNESS: Here it is. On what page is that statement of Mr. Medford?

Mr. HENKLE: On page 663 of the record in this case.

WITNESS: It is page 664, really.

Q. Mr. Medford, on page 664 of the testimony in this case, was asked, upon cross-examination, this question: "You know that Mr. Williamson, as your attorney, wrote Mr. McIntire, threatening to bring suit against him if he did not pay you something on
791 account of extras which you claimed;" to which he answered, "No, sir. Mr. Williamson is my attorney and has been my attorney in several instances. I employed him in the case at the police court. I may have talked the matter over with him about

the balance due from Mr. McIntire to me of eighty-odd dollars in the construction of those houses, but that long since passed out of my mind. I did think about bringing a lien and trying to get that money." What have you to say as to that?

Mr. MACKEY: I object to the question as improper on surrebuttal, and also as an improper way of proving any letter written by a third party.

A. I received a letter from Medford & Waldron, in the handwriting of Mr. Williamson, dated April 14, 1887.

Q. What is the paper you hold in your hand?

A. This is the letter I hold in my hand stating that unless eighty-one dollars and six cents is paid within three days from that date action will be taken against me.

Q. How do you know that letter is from Mr. Williamson?

A. I know Mr. Williamson's handwriting quite well, and I went to see him directly afterwards.

Q. Did he acknowledge the letter?

Mr. MACKEY: Objected to.

A. I had a conversation with him about it.

Mr. MACKEY: I object to the witness' statement of any conversation had by him with Mr. Williamson.

Mr. HENKLE: I here give that letter in evidence.

Mr. MACKEY: To the admission of which letter in evidence I object as being immaterial and not responsive to anything in the testimony of the complainant, and because it is, in any event,
792 improper to be offered in surrebuttal evidence, and because it is not proven to be a letter of Medford & Waldron.

NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 64.

Q. Will you state again, Mr. McIntire, where and how you received that letter?

A. This letter was handed to me by Mr. Medford at my office. It is signed by the firm of Medford and Waldron. I know their signature well, and at the suggestion of Mr. Medford I went with him or met him at the office of Mr. Williamson.

Q. What took place there, if anything, in regard to what was stated in that letter?

A. The matter stated in the letter was gone over, the bills recited in this letter we talked of, and I declined to make any payment of them, and then he threatened to sue Martha McIntire.

Mr. MACKEY: I object to the answer of the witness as immaterial and irrelevant and inadmissible at this time.

Q. Mr. McIntire, you heard the testimony of Doctor Bennett given in rebuttal in this case as to colored families living in the neighborhood of this property. State whether any mistakes were made by the Doctor in his testimony; and, if so, what.

A. There was a colored family who lived at that time at the

corner of Second and F streets northwest. There were four colored families living between these lots and that corner. To the east of the lots the property was occupied by colored families, and the alley to the rear was entirely occupied by colored people—some thirty or forty families—and it was generally known as a colored location.

793 Mr. MACKEY: Objected to as improper on surrebuttal.

Q. Mr. McIntire, there has been some question about the account of your sister, Martha McIntire, in the Central National Bank of Philadelphia. I want to know whether, before she opened a regular account, she had made deposits in that bank.

Mr. MACKEY: Objected to as improper on surrebuttal.

A. She had made deposits there, and had in her possession at different times certificates of deposits. I remember quite well they were the first certificates that I saw of that nature.

Q. State whether or not those certificates of deposit were independent of any regular account she had with the bank.

Mr. MACKEY: Same objection.

A. They were issued to her before she opened a regular account with the bank.

Q. Can you approximately state the amount of those certificates of deposit?

Mr. MACKEY: Objected — for the same reasons, and I wish to state right here, without interlarding this entire testimony with my objections, that this entire line of examination is objected to as being attempts to explain the testimony of Martha McIntire or of any of the witness- for the defence, which at this time is too late.

A. To the best of my knowledge they were several thousand dollars; I would not want to say more definitely than that.

Q. On page 231 of the testimony in this case your sister, Martha McIntire, on redirect examination was asked, "Did you get as much as three thousand dollars or four thousand dollars from her estate?" speaking of the estate of her sister, Addie McIn-
794 tire, to which she answered, "I think I did. It was divided between my other sister and me. She left it to both of us." Now, can you state, Mr. McIntire, what your sister Addie did leave her sisters Martha and Emma and in what form it was.

Mr. MACKEY: Question objected to for the same reasons given heretofore.

A. In the rebuttal testimony Mr. Mackey filed a statement made by my sister as to the amount of the estate of Addie McIntire. I have forgotten what it stated, but each of my sisters Martha & Emma received from my sister Addie McIntire, prior to her death, notes of twenty-five hundred dollars each on the Partello property on P street between Sixth and Seventh streets. She gave them to her

sisters just before her death or just a short time before her death. She was sick with consumption for some time.

Q. Well, Mr. McIntire, you say that she gave to each one of your sisters, Martha and Emma McIntire, a real-estate note for twenty-five hundred dollars?

A. Yes, sir; secured by deed of trust on property two or three doors east of Marion street on the north side of P street between Sixth and Seventh streets northwest, in this city.

Q. She delivered them to her sisters?

A. Yes, sir; one to Martha and one to Emma.

Q. Before she died?

A. Yes, sir; some little time before she died.

Q. I want to know whether or not those notes are embraced in this amount of three thousand dollars which was testified each one received from the estate of her sister Addie.

795 A. I was executor of the estate. The settlement of the estate was in their hands entirely. They were sole legatees under the will, and they received all the estate, and, to my certain knowledge, it amounted to over three thousand two hundred dollars each, counting these notes to which I have just referred, but these notes were not considered by me as part of her estate, because she had given them to her sisters a short time before her death.

Q. Mr. Jenison testified in rebuttal that you told him it was necessary to pay special taxes at once. What do you say as to that?

A. I never made that statement to anybody. I have advised people that it was better and to their interest to pay them; that they would save quite a heavy amount by paying promptly.

Q. You say you did not make that statement to Mr. Jenison?

A. I did not.

Q. It has been testified in rebuttal that a number of deeds which have been referred to in the progress of this case, made to Emma Taylor, showed by the marginal notes on the record that they had been delivered to you. What have you to say as to that?

A. I know that is not the case. I seldom, if ever, received a deed off the record at the office. The receipts were out in a box at my office and handed to the parties interested, or one of the clerks in the office, as the case might be, would take the receipt down, but they were never handed to me personally.

Q. They would go out of your office through a clerk?

A. Through a clerk or the parties interested in the prop-
796 erty. When I closed a transaction—a transaction involving the recording of a deed—I uniformally handed the receipt for the deed to the party and let the party get the deed from the recorder of deeds.

Q. Mr. Jenison also said that you reported to him that the property was much depreciated. What do you say as to that?

A. That is true. The property was depreciated very much at the time of the sale, and at the time he transferred the property subsequently he realized that fully, and could have verified it, if he did not verify it, by inquiring of any man in business at that time.

Q. What did you say to him, if anything, with regard to having a sale board on the property?

A. I put a sale board on the premises directly after the property was knocked down to him, and kept it there during all the time he owned the property. Several times during that period I advertised the property at my own expense, but he never obtained a purchaser or received a bid for it.

Mr. MACKEY: This is all objected to as being improper on surrebuttal.

Q. State whether or not when you sold the property it was the best you could get for it.

A. It was the highest and best bid I could get. There were a number of persons present and a number of bids on the property, but the price at which it was knocked down was the very highest obtainable.

Q. Is there anything else to which you wish to testify in this Pryor case?

A. Not in this case.

797 Cross-examination.

By Mr. MACKEY:

Q. Do you deny that those deeds to Emma Taylor which are of record in the office of the recorder of deeds in and for the District of Columbia, and which on the margin of the record are marked as delivered to you, were delivered to you or some one else in your office sent there to get them?

A. I deny that they were delivered to me, because I never received the number of deeds which you have put in evidence and claim to have been handed to me.

Q. Do you deny that they were delivered to some clerk of yours or person sent by your authority to get them in your name?

A. I do, because if that had been done I would recollect something about it.

Q. Do you mean to say that those deeds were delivered to Emma Taylor personally?

A. I do not mean to say anything of the kind. I do not know. I mean to say that they were not delivered to me or to any one with my authority.

Q. You say that you had a box in your office containing receipts given by the recorder of deeds for deeds received by him for record. Do you mean to say that you had in that box receipts which were given to Emma Taylor for deeds which she delivered for record?

A. I had very few receipts there for deeds; principally for deeds of trust. In making a sale of property it was my custom to hand the receipt over to the person who bought.

Mr. MACKEY: I request the examiner to repeat the ques-
798 tion to the witness and ask for an answer to it.

NOTE.—Last question repeated to the witness by the examiner.

WITNESS: I said that I did not mean to say anything of that kind.

Q. Did you have receipts in that box which had been given to Emma Taylor for deeds delivered for record by her?

A. I think I have answered that question already. I said that it was not my custom to put in the box receipts for deeds in fee. Those were most always, if not always, turned over to the grantee.

Q. Do you mean by your answer to say that you did not have such receipts in that box?

A. I do not see how I could answer the question any more directly.

Mr. MACKEY: Yes, you could by answering yes or no.

Q. I want to know whether you had in that box receipts given to Emma Taylor by the recorder of deeds for deeds delivered by her for record.

Mr. MACKEY: Now, you can answer that yes or no.

WITNESS: I will answer it in my own way, if you please.

Mr. MACKEY: Well, answer it any way, so you answer it.

A. After the lapse of ten or twelve years it would be a matter of impossibility for any person to say exactly what papers were in a certain place at a certain time. I have answered your question the best I know how, without any intention to equivocate.

Q. You yourself, then, have no explanation to make in regard to the fact of *their* being entered upon the margin of the record
799 of those deeds a note that the original deeds were delivered to you?

A. I was a clerk myself in the office of the recorder of deeds at one time and I know it was the custom there to hand deeds to persons who would present receipts and frequently enter on the receipts the name of the party or attorney or broker who was concerned.

Mr. MACKEY: I will move the court to strike out that answer as irresponsive to anything asked by counsel for the complainant.

Q. Do you think it likely that any deeds were taken off the record, out of the office of the recorder of deeds, by you or some — for you from your office, for Emma Taylor?

A. That I could not answer without guessing.

Q. Did you ever record a deed for Emma Taylor?

A. Not to my knowledge.

Q. I mean delivered to the recorder of deeds to be recorded?

A. Not to my knowledge.

EDWIN A. McINTIRE.

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(Adjourned.)

800 MARCH 6, 1894.

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MARTHA MCINTIRE, who being recalled (in surrebuttal)—

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Direct examination.

By Mr. HENKLE:

Q. On page 201 of the record of testimony in this Pryor case Mr. Mackey asked you if you had ever bought a house from your brother, Edwin A. McIntire, and you replied that you did not——

A. (Interposing.) Yes, sir; I did tell him that.

Q. Since you testified Mr. Mackey has filed in evidence, as Exhibit A. H. No. 50 in this case, certified copy of a deed, dated December 18, 1879, from Edwin A. McIntire and wife to Martha McIntire for lot 17, in Bramhall's subdivision of square south of square 1059. What explanation have you to make of that?

A. Well, my other brother, my brother Henry McIntire, bought it for me with money that I had sent on. I did not know that he had bought it from my brother, Edwin A. McIntire. I always called it the Bramhall property. The other brother has died—I mean Laura Galliher's father, Henry McIntire; he was the one who bought it for me.

801 Q. You did not know that he bought it from your brother, Edwin A. McIntire?

A. I knew it at the time, I suppose. I had forgotten it in the hurry and care of business; it escaped my memory. I had forgotten all about it until my brother, Edwin A. McIntire, came up and told me that Mr. Mackey had filed a paper to that effect against me. Then he looked up the record, and I looked up my papers and found the deed of what I call the Bramhall property.

Q. What is it worth?

A. I think $250 I gave for it. It brings very small rent and is often unoccupied.

Q. It is assessed at what?

A. Twenty-eight dollars.

Q. When did you get it?

WITNESS: When did I get the deed?

Mr. HENKLE: Yes.

A. I do not remember exactly when I got the deed, but I did not get it until after the death of my brother, Henry McIntire.

Q. It was dated in September, 1879?

A. Yes, sir. He died in 1879. My brother Henry made all the arrangements for it, and this brother (Edwin A. McIntire) finished it up. The other one used to attend to business for me.

Q. What was the lot assessed at? You said twenty-eight dollars, did you not?

A. Yes, sir.

Q. There is a house upon it?

A. Yes, sir.

802 Q. What is that assessed at?

A. I do not know that I know. I have forgotten that, but I think at about one hundred dollars.

Q. On page 194 of the record of testimony in this case you were asked as to the number of your deposits in the Central National bank, in Philadelphia, and you said, "I suppose I made more than ten deposits." What did you refer to?

A. Well, I referred to the deposits I made in the bank at different times & several certificates of deposit that I have made there.

Mr. MACKEY: Objected to as incompetent on surrebuttal.

Q. You referred to several certificates of deposit?

A. Yes, sir.

Q. Did or not the certificates of deposit go into your bank account?

WITNESS: In my book?

Mr. HENKLE: Yes.

A. Oh, no.

Q. You just deposited the money and took certificates?

A. Yes, sir.

Q. They were no part of your bank account?

A. No, sir.

Mr. MACKEY: Objected to because not competent on surrebuttal.

Q. It has been testified upon the other side by Mrs. Galliher that your sister, Emma T. McIntire, was known in the family as Emma Taylor——

A. (Interposing.) Well, she was not; that is not so. She was never known as that, nobody ever called her that, and she

803 never signed her name as that; nothing of the kind.

Mr. MACKEY: Objected to as not competent on surrebuttal.

Q. Did you ever hear her called that?

A. No, never; and Laura Galliher never has.

Q. On pages 230 and 231 of the record in this case, in speaking of the estate of your sister Addie, you said that you thought you did get three thousand dollars from her estate, and that it was divided between you and your other sister; will you explain what you meant by that?

Mr. MACKEY: Objected to as not competent on surrebuttal.

A. Why, I mean that Emma got one-half of what she was worth and I got the other half.

Q. What was she worth?

A. Before she died she gave Emma and me some notes secured by deeds of trust on some P-street property.

Q. What were the amounts of the notes she gave you?

A. Twenty-five hundred dollars apiece.

Q. She gave each of you twenty-five hundred dollars in notes?

A. Yes, sir; before she died, secured by deed of trust on what we call the Partello property on P street.

Q. Was there anything coming from her estate besides that which you got?

A. Yes, sir; she had other property. All these twenty-five-hundred-dollar notes she gave us before her death. I cannot remember how much of the other we got, but I got over three thousand dollars as my share of it, and Emma got the same.

Q. You mean all together?

A. Yes, sir.

Q. Including the notes?

804 A. Yes, sir.

Mr. MACKEY: Objected to as incompetent, and also because eminently of a leading character.

Q. On page 666 of the record in this case Mr. Medford said, in rebuttal, that you seemed to act as if you did not have anything to do with the houses when you went there; and he says on page 665, "She did not act as if she owned the houses; she acted more like a disinterested party to me;" and on page 666 he said that he had no conversation about concreting the cellar and does not remember anything being said about a pump in the alleyway. Will you be kind enough to state what you have to say about that?

A. Well, I would talk to him——

Q. (Interposing.) First, when you visited there, as to how you acted

A. The first time I went there I went with my brother Edwin. The houses were not completed. There were no steps to the door and I had to go up on a plank, my brother Edwin assisting me to get up, and he introduced Mr. Medford to me. I asked him about the cellar. I looked down the cellar; it was not finished, and I asked him if he was going to concrete it. He said that it did not need concreting, as the ground was so hard and dry. I told him that I wanted it concreted according to the contract, and he told me it should be done. I spoke of the pump in the alleyway, in the back way. He told my brother before that it would not drain off. I told him that I wanted him to put a pump in there. He said that it would work, and he did put a pump in there, but it was no good. I spoke of the mantels and a few other trifling *other* things.

805 Q. You did that in your capacity as proprietor?

Mr. MACKEY: Objected to as leading.

A. Yes, sir; I was building the houses, and I wanted to have my say. I wanted the things done to suit me, as my money paid for it.

Q. I want to know whether Mr. Medford understood at the time that you were giving directions about the property as the owner or not.

A. I supposed he did, if he was a man who had any sense. He

recognized me afterwards in church, and he pointed me out in church to his partner. He attracted the attention of my mother, and she noticed that he was pointing me out.

Q. State whether or not you had any conversation with Mr. Medford in which you expressed regrets about the colored people around there.

A. Yes, sir; I said something, but I did not say much about it, for they seemed to be clever people.

Q. Well, as affecting the rental of your property?

A. Yes, sir.

Q. On page 655 of the record in this case Mr. Medford, on rebuttal, in speaking of the contract filed as Exhibit A. H. No. 18 in this case, said that was the copy which belonged to him, and that your signature was not on it at that time——

A. (Interposing.) I signed both signatures. His signature was there. I guess he could not have had his glasses on.

Q. I want to know whether or not you had a copy of that contract, being the contract between yourself and Medford & Waldron.

A. Yes, sir; he had a copy and I had a copy. It was on
806 yellow paper.

Q. The copy offered in evidence as Exhibit A. H. No. 18 in this case. Was that your copy?

A. That is my copy.

Q. How do you know that?

A. Because I gave my papers to my brother, Edwin A. McIntire, and I suppose he would give them up instead of the other man.

Q. When you say that you signed both signatures you do not mean that you signed Mr. Medford's signature?

A. No; I signed my name on both papers.

Q. What was done with the other copy?

A. I suppose it was given to Mr. Medford. I trusted my brother to attend to that.

Cross-examination.

By Mr. MACKEY:

Q. In regard to this property that you first testified about today, how did you come to find out that you owned it?

WITNESS: You mean this property about which the paper was filed against me by you?

Mr. MACKEY: Yes.

WITNESS: How did I find out that I owned it?

Mr. MACKEY: Yes.

A. Why, because I knew I bought it.

Q. Has not your brother, Edwin A. McIntire, talked to you about it since you testified heretofore?

A. He came up and told me that you had filed a paper to that effect.

Q. And then he told you that you had bought it?

807 A. He told me that my other brother had bought it from him—that my other brother had bought it for me. I called it the Bramhall property.

Q. What has become of the property?

A. I have it yet; it is on South Carolina avenue.

Q. You did not recognize the fact until your brother called your attention to it?

A. I had forgotten all about it.

Q. Now, you say that you looked up your papers to see whether you bought it. What papers did you have to look up?

A. Why, all my papers.

Q. I thought you said that you had lost all your papers in reference to these matters?

A. Yes, sir; but that paper did not have any reference to these matters.

Q. You lost your papers in reference to these other matters?

A. Yes, sir; memoranda which I have told you I have lost.

Redirect.

By Mr. HENKLE:

Q. Did you say at any time that you had lost all your papers?

A. No, sir; I told Mr. Mackey that I had lost some memoranda which I had. I did not lose any papers at all. All the valuable papers I gave to my brother that belonged to these matters.

Q. What did your brother say to you when he told you that Mr. Mackey had put this deed in evidence?

A. He told me that Mr. Mackey, in looking over the records, found a deed of property that I had bought from him, my
808 brother, Edwin A. McIntire. When Mr. Mackey asked me about buying property from my brother I told him that I had not. I had forgotten all about that. I looked through my papers and found that I had the deed in the deposit company. I went down there and looked and saw that it was all right and I found the deed from my brother.

Q. You had forgotten that it was from him before that time?

A. Yes, sir.

Mr. MACKEY: I object to this manner of putting words in the mouth of the witness.

Q. Where did you suppose you got that lot from?

A. I always called it the Bramhall property. My brother died who had bought it and I had forgotten all about it.

Recross.

By Mr. MACKEY:

Q. You say that it was assessed at twenty-eight dollars; who told you that?

A. My brother, Edwin A. McIntire, told me that.

Q. You only know that from what he told you?

A. Certainly. He attended to all matters of that kind for me. I do not run about the tax office and attend to such things.

Q. You say that you got about three thousand dollars from your sister Addie's estate. She is not the one who made the power of attorney to you, is she?

A. Power of attorney for what?

Q. In order to obtain the money out of the savings bank in Philadelphia?

A. I do not understand you.

809 WITNESS (addressing Mr. Edwin A. McIntire): What does he mean?

Mr. MACKEY: Do not speak to your brother.

Q. Is she the one that you got the power of attorney from?

A. Tell what year.

Q. About 1880, I think it was.

A. That is another sister that died.

Q. You got a power of attorney from her?

A. I believe I did. I have forgotten almost everything that happened about family matters ten years ago.

Q. You will not testify about the power of attorney that your sister Sarah gave you?

A. I will have to think it over.

Q. Did you not draw some money out of the savings bank in Philadelphia on a power of attorney from her?

A. I think not, but I will not be certain. I will have to look up my old books to find out. I would not like to reply positively about that now. I do not know whether I can find anything or not about it.

Q. You do not remember getting twelve hundred dollars from the savings bank in Philadelphia on a power of attorney from your sister Sarah?

A. Yes; I did get some money, but I cannot remember how much.

Q. Do you not remember that you got o*b*er one thousand dollars?

A. I could not swear how much I got.

Q. You do not remember about the matter of that power of attorney at all?

810 A. I do not remember much about it. I will have to look over some old papers that I have before I can answer to my satisfaction.

MARTHA McINTIRE.

Subscribed and sworn to before me this 6th day of March, A. D. 1894.

ALBERT HARPER, *Examiner.*

NOTE.—The examiner is requested by the solicitors
811 & 812 for the respective parties to enter of record the following stipulation as to the evidence in this case:

It is mutually stipulated by and between the respective parties to

this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, equity, No. 12761; Brown *vs.* McIntire, equity, No. 12977; Ackerman *vs.* McIntire, equity, No. 12978; Southey *vs.* McIntire, equity, No. 13034, and Hayne *vs.* McIntire, equity, No. 13177, in the supreme court of the District of Columbia, so far as the same may be relevant to the issues raised in this case of Pryor *vs.* McIntire (equity, No. 12761) in respect of Emma Taylor, Martha McIntire, or Edwin A. McIntire, may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein, subject to all and any objections as to the materiality and competency thereof which could have been made if the same had been taken therein.

Mr. HENKLE: Testimony in surrebuttal in behalf of the defendants is here closed.

ALBERT HARPER, *Examiner.*

* * * * * * *

813 EXHIBITS.

PRYOR *vs.* MCINTIRE.

Ex. A. H. No. 1 consists of sixteen receipts for rent of property 108 F street N. W., date respectively for the year 1881, May 6, July 5, Aug. 6, Sept. 7, Nov. 15, Oct. 10, Dec. 15; and for the year 1882, Jan. 9, Feb. 15, March 15, Apr. 15, May 12, June 15, July 15, Aug. 15; and for the year 1883, March 18. All of said receipts are for one month's rent each, to wit, $6. Two of them are signed "E. A. McIntire," and the rest, "E. A. McIntire—H." They are all written upon the same printed form, and the first is given as a specimen of all.

Houses and lots sold and exchanged. Money carefully invested. Loans negotiated.

$6. Office of E. A. McIntire, real-estate broker, No. 918 F street N. W.

WASHINGTON, D. C., *May 6th*, 1881.

Received of Mr. Thos. Pryor the sum of six dollars for one mo.'s rent of house No. 108 F St. N. W. (due 4th).

E. A. McINTIRE.

I desire to study the interests of both landlords and tenants; but tenants must remember that in my position as agent I am expected to collect promptly and report only such repairs as are actually necessary.

E. A. McINTIRE.
H.

Ex. A. H. No. 2 is a deed of trust, dated the 2nd day of May, 1876, between Mary C. Pryor and her husband, Thomas Pryor, of the city of Washington, District of Columbia, parties of the first part, and Brainard H. Warner and Henry McIntire, of the same place, of the second part. It recites an indebtedness of the
814 parties of the first part to George E. Emmons in the sum of $500 for money loaned and advanced, for which the parties of the first part have delivered to said Emmons their joint and several promissory note of even date with said deed for the aforesaid amount, payable to his order two years after date, with interest at 10% per annum, and, being desirous to secure the punctual payment of the said note when and as the same shall become due, they convey to the parties of the second part part of lots numbered 21 and 22, in square 569, being the property described and known in these proceedings as the "Pryor property." The deed is in the ordinary form of deeds of trust used in this District, except that the covenant- for insurance and to pay taxes are stricken out. It authorizes the sale of the property by the trustees after at least ten days' notice by advertisement upon default being made in the payment of the note. The deed is acknowledged on the same day before Samuel C. Mills, notary public of the District of Columbia.

815 EXHIBIT A. H. No. 3.

This indenture, made this third day of May, in the year of our Lord one thousand eight hundred and eighty-one (1881) between Mary C. Pryor and Thomas Pryor her husband, of the city of Washington in the District of Columbia, of the first part, and Martha McIntire of the same place of the second part,

Witnesseth, that said parties of the first part, for and in consideration of the sum of five dollars (and the payment by said Martha McIntire of the deeds of trust on the property hereinafter described) *dollars*, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns, forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit:

All that certain lot or piece of ground described as and being part of lots twenty-one and twenty-two in square five hundred and sixty-nine (569). Beginning for the same at a point on F street north distant 19 feet from the northeast corner of lot 20 in said square thence running east on the line of F street 26 feet thence south 100 feet to a 20-foot alley thence west along the line of said alley 26 feet thence north one hundred feet to the place of beginning, together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title,

interest, and claim, whatsoever, either at law or in equity, of
816 the said parties, of the first part, of, in and to, the said piece or parcel of land and premises, subject however to a certain deed of trust dated May 2d, 1880, recorded May 28, 1880,

To have and to hold the said piece or parcel of land and premises, with the appurtenances unto the said party of the second part, her heirs and assigns, to her and their sole use, benefit and behoof, forever.

And the said Mary C. Pryor and Thomas Pryor for themselves and each for herself and himself and for their heirs, executors and administrators do hereby covenant, promise, and agree, to and with the said party of the second part, her heirs and assigns, that they the said parties of the first part and their heirs shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances, unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under or through him them or any of them and against any and all other person or persons whomsoever.

And further, that they the said parties of the first part and their heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make, execute, deliver and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances, unto the said party of the second part, her heirs or assigns as the said party of the second part, her heirs or assigns, or her counsel learned in the law shall advise, devise or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore writ'en.

MARY C. PRYOR. [SEAL.]
THOMAS PRYOR. [SEAL.]

Signed, sealed, and delivered in the presence of us, the word "seventy" in the 3 line 1 page being first stricken out of the word Martha in the 6 line, written over an erasure, and same in 11 line.

WM. HELMICK.
E. A. McINTIRE.

817 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Mary C. Pryor and Thomas Pryor, parties to a certain deed bearing date on the third day of May, A. D. 1881, and hereto annexed, personally appeared before me in the county aforesaid, the said Mary C. Pryor and Thomas Pryor being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed;

and the said Mary C. Pryor, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this 3d day of May, A. D. 1881.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Deed. Mary C. Pryor and Thomas Pryor to Martha McIntire. Received for record on the — day of ——, A. D. 187–, and recorded in Liber No. —, folio —, one of the land records for the District of Columbia, and examined by —— ——, recorder.

818 EXHIBIT A. H. No. 4.

This indenture, made this second day of May in the year of our Lord one thousand eight hundred and eighty (1880), between Mary C. Pryor and her husband Thomas Pryor of the city of Washington, D. C., of the first part, and Edwin A. McIntire of the same place, trustee, of the second part:

Whereas, the said parties of the first part stand justly indebted to H. Jenison in the sum of four hundred and fifty dollars money loaned and advanced, have made, signed and delivered unto H. Jenison and payable to his order one year after date, their certain joint and several promissory note of even date herewith, in and for the aforesaid amount with interest at the rate of eight per cent. per annum until paid, payable quarterly, and being desirous to secure the punctual payment of said note when and as the same shall respectively become due and payable, with all interest and costs due and accruing thereon, they therefore execute these presents.

Now therefore this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns, the following described real estate situate in the city of Washington, D. C., and known as being part of lots numbered twenty-one (21) and twenty-two (22) in square numbered five hundred and sixty-nine (569). Beginning for the same at a point on "F" street north, distant nineteen (19) feet, from the northeast corner of lot numbered twenty (20) in said square, thence running east on the line of "F" street twenty-six (26) feet, thence south one hundred (100) feet to a twenty (20) feet alley, thence west along the line of said alley twenty-
819 six (26) feet thence north one hundred (100) feet, to the place of beginning; together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same be-

longing, or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to or out of the said described real estate and premises.

To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said Mary C. Pryor, her heirs and assigns, to use and occupy the said described premises, and the rents, issues and profits thereof, to take, have, and apply, to and for her and their sole use and benefit until default be made in the payment of said note or any instalment of interest thereon, or any proper cost, charge, commission, half commission or expense in and about the same.

And upon the full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Mary C. Pryor her heirs or assigns, at her or their cost.

And upon this further trust, that upon default being made in the payment of said note or any instalment of interest thereon, or any proper cost, charge, commission, half commission or expense in and about the same, then and at any time thereafter, to sell the said described real estate and premises, at public auction, upon such terms and conditions and at such time and place and after such previous public advertisement as the said party of the second part, his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation a commission of ten per cent., on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note, and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Mary C. Pryor her executors, administrators or assigns.

And the said Mary C. Pryor and [Thomas Pryor]* do hereby agree, at their own cost, during all the time, wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due and to keep the said improvements insured against fire, in the name and to the satisfaction of said party of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to so pay said taxes and assessments or to so insure, any party secured hereby may pay said taxes and assessments or may have said improvements

[* Erased in copy.]

insured and the expenses thereof shall be a charge hereby secured and bear like interest, as the matter secured.

And upon any such failure to pay said taxes and assessments, or to insure, the said parties of the second part, his heirs may sell the said described real estate and premises, and apply the proceeds of said sale as hereinbefore directed.

And it is expressly provided, that if said property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half of the commission above provided, to be computed on the amount of the debt hereby secured and the same is hereby secured.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

MARY C. PRYOR. [SEAL.]
THOMAS PRYOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. C. DUVALL.

821 UNITED STATES OF AMERICA, }
District of Columbia. }

I, W. C. Duvall, a notary public in and for the District aforesaid, do hereby certify that Thomas Pryor and Mary C. Pryor, parties to a certain deed bearing date on the second day of May, A. D. 1880, and hereto annexed, personally appeared before me, in the District aforesaid, the said Thomas Pryor and Mary C. Pryor, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary C. Pryor, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this twenty-seventh day of May, A. D. 1880.

W. C. DUVALL,
[SEAL.] *Notary Public, D. C.*

Endorsed: Deed of trust from Mary C. Pryor and Thomas Pryor to Edwin A. McIntire, trustee. Time, 12 o'clock 10 minutes p. m. Received for record on the 28 day of May, A. D. 1880, and recorded in Liber No. 941, folio 449 *et seq.*, one of the land records for the District of Columbia, and examined by Geo. A. Sheridan, recorder. Sold to Hartwell Jenison.

822 EXHIBIT A. H. No. 5.

JUNE 9, '81.

E. A. McIntire, trustee.

You are hereby authorized to bid for me at the sale to be held of Mr. Pryor's property, F St. near 1st, tomorrow (or whenever it may take place), an amount sufficient to cover loan, taxes, & expenses.

H. JENISON,
Cestui que Trust.

EXHIBIT A. H. No. 6.

TREASURY DEPARTMENT,
REGISTER'S OFFICE, *Ap'l* 13, 1882.

E. A. McIntire.

D'R SIR: I take it for granted that you have not effected any trade or exchange for my lot & presume there is not much prospect of making a sale before maturity of the trust deed. I do not think there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on; besides, I am not in a situation to carry it. I shall doubtless have to submit to a sacrifice by forced sale, but may realize a little over the incumbrance should there be any competition in bidders. Unless you think you can do better, I wish you would advertise & do the best you can in its disposition.

If you happen to be up to the Treas'y please call. I have looked into your office several times, but found you "*non est.*"

Truly yours, H. JENISON.

823 EXHIBIT A. H. No. 7.

U. S. TREASURY DEPARTMENT, *Ap'l* 23, '90.

Mr. McIntire:

An att'y for the Priors has interviewed me in reference to your "stewardship" as trustee in my behalf, &c., & was especially anxious to ascertain the modus of transfer, &c. (the Priors claiming that there was no regular sale of the property). I have kept no memorandum of my action in the matter, having left the manag't to yourself entirely. I wish you would give me a detailed statement of transaction so that I could be posted if called upon for my testimony.

Truly yours, H. JENISON.

(On back.)

AP'L 24, '90.

D'R SIR: The property alluded to in your note of yesterday was sold at public sale and knocked down to you as holder of the note & as highest bidder, it being bid in for you to save you loss. There was nothing irregular about it. It is rather a late day for them to inquire and complain.

Pray who was the attorney?

V. R., E. A. M.

EXHIBIT A. H. No. 8.

Whereas, we, the subscribers, have erected and furnished materials for erecting two houses on F street northwest between 1st and 2d streets on part of lot or piece of ground situate and known as part of lots 21 & 22 in square 569 and also two houses on the rear of said lot fronting on an alley. The front houses to be number 108 and 110 F street northwest in the city of Washington, D. C., and have agreed to release all liens which we, or any or either of us have, or might have, on the said four houses and parts of lots by reason of materials furnished, or work performed for erecting the said houses: Now these presents witness, that we, the subscribers, for and in consideration of the premises, and of the sum of one dollar, to each of us at or before the sealing and delivery hereof by Martha McIntire, well and truly paid, the receipt whereof we do hereby acknowledge have remised, released, and forever quitclaimed,
824 and by these presents do remise, release, and forever quitclaim unto the said Martha McIntire and to her heirs and assigns, all and all manner of liens, claims, and demands whatsoever, which we, or any or either of us now have, or might or could have, on or against the said houses and premises, for work done, or for materials furnished, for erecting and constructing the said four houses or otherwise howsoever, so that she the said Martha McIntire her heirs and assigns shall and may have, hold, and enjoy the said four houses and premises, freed and discharged from all liens, claims and demands whatsoever, which we, or any or either of us, now have, or might or could have, on or against the same, as if these presents had not been made.

In witness whereof, we have hereunto set our hands and seals, the day of the date written opposite our respective signatures.

Date.	Witnesses at signing.	
October 23, '86	E. A. McIntire	Richard Skinner (seal). Cellar-digging.
Jan'y 5, '87	W. A. Test	Kehl O'Donnell Co. (seal). Tinners.
Nov. 10, '86	W. A. Test	Mushback & Colton, trustees Cap. Pressed Br. Co. (seal). Bricks.
Dec. —, '86	W. A. Test	William Harvey (seal). Bricklayer.
April 9, '87	W. A. Test	Anthony Brooks (seal). Paving yards.
Ap'l 21, '87	W. A. Test	Wm. H. West & Bro. (seal), per G. J. W. Splay-d brick & paving brick.
Mar. 31, —		Barber & Ross (seal). Millwork & hardware.
Mar. 17, —	W. A. Test	Kehl and O'Donnell (seal). Tinsmith-.

Date.	Witnesses at signing.	
February 2, '87	W. A. Test	M. Roche, slate mantels (seal). Marble mason, mantels, &c.
Feb'y 12, '87	W. A. Test	Wm. A. Cassell (seal). Plumbing.
Feb'y 12, '87	W. A. Test	James F. Nolan and Co. (seal). Concreting the cellars, &c.
Feb'y 19, '87	.....	I. B. Suit (seal). Latrobes & ranges.

825 EXHIBIT A. H. No. 9.

Rec'd, Wash'n, D. C., Oct. 18, '86, of Martha McIntire, through her agent, E. A. McIntire, a check on the Central National bank for sixty-two $\frac{51}{100}$ dollars, in consideration of which payment I do hereby assign, set over, and transfer to her, the said Martha McIntire, her heirs and assigns, all my right, title, and interest in and to the east party wall of premises situate No. 112 F St. N. W., upon part of lot 21, in square 569, Wash'n, D. C., hereby granting unto said Martha McIntire the full and complete authority to cut into said wall for the insertion of the joist, &c., of the house or houses which may now or at any time hereafter be built on the lot adjoin- to the eastward of my said premises.

Witness my hand & seal the day and year first above written.

her
SARAH x JOHNSTON. [SEAL.]
mark.
E. A. McINTIRE.

Witness:
MAGGIE JOHNSON.
M. J. McCARTHY.

Engineer department, District of Columbia, office of the inspector of buildings.

WASHINGTON, *Oct. 18th*, 1886.

Messrs. Medford and Waldron to Mrs. Sarah Johnson, Dr.

For half of east party wall of house 112 F St. N. W., containing in half thickness 4,644 brick, at $14.00 per M..	$65 01
Fee for measuring (paid by M. & W.), $5.00, half cash....	2 50
	$62 51

Measured & valued by—

THOS. B. ENTWISLE,
Inspector of Buildings.

826 Engineer department, District of Columbia, office of the inspector of buildings.

WASHINGTON, *Oct. 12th*, 1886.

Messrs. Med ord and Waldron, contractors, to Mrs. Sarah Johnson, Dr.

For half of party wall bet. lots 21 and 22, sqr. 569, containing in half thickness (as far as will be occupied) 3,628 bricks, at $14.00 per M.....	50 79
Fee for measuring, $5.00, paid by M. & W., half each....	2 50
	$48 29

Measured & valued by—

THOS. B. ENTWISLE,
Inspector of Building-.

Engineer department, District of Columbia, office of the inspector of buildings.

WASHINGTON, *Oct. 19th*, 1886.

Messrs. Medford & Waldron to Luke Madison, Dr.

For half of west party wall of house No. 106 F St. N. W., containing in half thickness 3,973 bricks, at $14.00 per M.....	55 62
Fee for measuring, $5.00, half each.....	2 50
	$58 12
Less am't for removing dirt.....	1 50
	56 62

Measured and valued by—

THOS. B. ENTWISLE,
Inspector of Buildings.

Rec'd, Wash'n, D. C., October 21, 1886, of Martha McIntire, a check on the Central Nat'l bank to order of Medford & Waldron (drawn by E. A. McIntire) and endorsed to me; in consideration of which payment I do hereby assign, set over, and transfer to her, the said Martha McIntire, her heirs and assigns, all my right,
827 title, and interest in and to the west party wall of my premises, situate No. 106 F street N. W., upon part of lot —, in square 569, Wash'n, D. C., hereby granting unto said Martha McIntire the full and complete authority to cut into said wall for the insertion of the joist, &c., of the house or houses which may now or at any time hereafter be built on the lot adjoining to the westward of my said premises.

Witness my hand and seal the day & year aforesaid.

LUKE MADISON.
LUKE MADISON. [SEAL.]

Witness:
CHAS. MEDFORD.

EXHIBIT A. H. No. 10.

No. —. WASHINGTON, D. C., *Dec. 30th*, 1882.

(Stamp.) Second National bank

Pay to the order of E. A. McIntire [or bearer],* twenty-five $\frac{}{100}$ dollars.

Deposition east part of lot 4, sq. 154.

$25. JOSEPH FORREST, *Trustee.*

Endorsed: E. A. McIntire.

EXHIBIT E. H. No. 11.

No. —. WASHINGTON, D. C., *Jan. 4th*, 1883.

(Stamp.) Second National bank

Pay to the order of E. A. McIntire, agent, [or bearer],* nine hundred & twenty-six $\frac{96}{100}$ dollars.

Bal. on part lot 4, sq. 154.

$926.96. JOSEPH FORREST.

Endorsed: E. A. McIntire, ag't.

828 EXHIBIT A. H. No. 12.

This indenture, made this fourteenth day of May in the year of our Lord one thousand eight hundred and eighty-three by and between Emma Taylor of the city of Philadelphia of the first part, and Alfred Brown of the city of Washington in the District of Columbia of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred dollars, in lawful money of the United States, to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and conveyed, and doth by these presents, grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns, forever, the following-described real estate situate in the city of Washington in the District of Columbia to wit: All that certain piece or parcel of land and premises, known and distinguished as and being the northeast one-quarter part of lot thirty-one (31) in square three hundred and eighty-eight (388) being the east thirteen feet front on E street, southwest, of said lot by a depth of sixty-two and one-half feet

Together with all the improvements, ways, easements, rights, priv-

[*Erased in copy.]

ileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, either at law or in equity, of the said part- of the first part, of, in, to or out of the said piece or parcel of land and premises.

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit, and behoof, forever.

829 And the said party of the first part, for herself and for her heirs, executors and administrators, doth hereby covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that she the said party of the first part, and her heirs shall and will warrant and forever defend the said piece or parcel of land, premises and appurtenances, unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through her, them, or any of them.

And further, that she, the said party of the first part, and her heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part his heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of land and premises, and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his counsel learned in the law shall advise, devise or require.

In testimony whereof, the said party of the first part has hereunto set her hand and seal on the day and year first hereinbefore written.

EMMA TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

CITY OF WASHINGTON, }
District of Columbia, } ss:

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Emma Taylor, party to a certain deed bearing date on the fourteenth day of May, A. D. 1883, and hereunto annexed, personally appeared before me, in the
830 District aforesaid, the said Emma Taylor being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this 14 day of May, A. D. 1883.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Endorsed: Deed from Emma Taylor to Alfred Brown. Received for record on the 16 day of May, A. D. 1883, at 9.20 o'clock a. m., and recorded in Liber No. 1043, folio 5 *et seq.*, one of the land records of the District of Columbia, and examined by Fred'k Douglass, recorder.

EXHIBIT A. H. No. 13.

Office of Edwin A. McIntire, real-estate broker and attorney-at-law, 918 F street N. W.

WASHINGTON, D. C., *May* 14, 1883.

Received this 14th day of May, A. D. 1883, of Alfred Brown the sum of two hundred dollars, as the first payment on sale of house No. 916 E street southwest, being the northeast ¼ part of lot 31, in square 388, as per agreement of this day.

Rec'd also the additional sum of twenty dollars to pay costs of transfer, &c., &c.

Total, $220.

E. A. McINTIRE, *Agent.*

831 EXHIBIT A. H. No. 14.

This indenture, made this thirty-first day of May in the year of our Lord one thousand eight hundred and eighty-four (1884) by and between Emma Taylor, of the city of Philadelphia, in the State of Pennsylvania, of the first part, and Martha McIntire of the city of Washington, D. C. party of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of two thousand five hundred dollars, in lawful money of the United States to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold aliened, enfeoffed, released and conveyed and doth by these presents, grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, her heirs and assigns, forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All those certain pieces or parcels of land and premises known and distinguished as being part of lot twenty-one in square seventy-seven (77) described as beginning at a point on the south line of north I street seventeen feet east from the northwest corner of said lot thence running eastwardly eighteen feet thence southwardly on a line at right angles with said street ninety feet eleven inches, thence west eight feet seven and one-half inches thence south to the south line of said lot thence west nine feet four and one-half inches, thence north to the place of beginning.

And also part of lots numbered twenty-one and twenty-two in square numbered five hundred and sixty-nine (569) described as beginning at a point on F street north nineteen feet from the northeast corner of lot twenty (20) in said square, thence running east on

F street twenty-six (26) feet thence south one hundred feet to a twenty-feet-wide alley thence west twenty-six feet, thence north one hundred feet to the place of beginning.

832 Together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments, to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said party of the first part, of, in, to, or out of the said pieces or parcels of land and premises.

To have and to hold, the said pieces or parcels of land and premises, with the appurtenances unto the said party of the second part, her heirs and assigns, to her sole use, benefit and behoof, forever.

And the said party of the first part for herself and for her heirs, executors, and administrators, doth hereby covenant, promise and agree, to and with the said party of the second part, her heirs and assigns, that she the said party of the first part, and her heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim *to* same, or any part thereof, by, from, under, or through them or any of them.

And further, that she, the said party of the first part, and her heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make, execute, deliver and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, her heirs or assigns, as the said party of the second part, her heirs or assigns, or her counsel learned in law shall advise, devise, or require.

In testimony whereof, the said party of the first part hath
833 hereunto set her hand and seal on the day and year first hereinbefore written.

EMMA TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Emma Taylor, party to a certain deed bearing date on the thirty-first day of May, A. D. 1884, and hereunto annexed, personally appeared before me in the District aforesaid, the said Emma Taylor being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed; and the said Emma Taylor, being of full age and being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she

had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this thirty-first day of May, A. D. 1884.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Endorsed: Deed from Emma Taylor to Martha McIntire. Received for record on the 14th day of Oct., A. D. 1886, at 12 o'clock m., and recorded in Liber No. 1210, folio 182 *et seq.*, one of the land records of the District of Columbia, and examined by Jas. C. Matthews, recorder.

834 Signed in duplicate & a copy given Mr. Pryor May 6, '81.

EXHIBIT A. H. No. 16.

This agreement, made this fourth day of May, A. D., 1881, witnesseth that Thomas Pryor did hereby rent from Edwin A. McIntire, agent, the premises situate No. 108 F St. N. W., (being wood & coal yard with sheds, fences &c. on part of lots 21 & 22 in square 569), in the city of Washington, D. C., for the period of one year from May 4, 1881, and thereafter from month to month at the monthly rent or sum of six dollars, the first payment to be made on the fourth day of May, A. D., 1881 and the subsequent payments of like sum to be made in advance on the fourth day of June and the 4th day of each and every month during the continuancy of said tenancy. Said rent to be payable as it falls due at the office of the said McIntire in the city of Washington, and no demand for said rent at any time shall be necessary for any purpose in any event. He agrees that he will not use the premises for any unlawful purpose but will occupy the same as a wood and coal yard, and will not sublet the house or any part thereof nor any part of the lot nor transfer possession thereof to any person or persons, nor carry on any business therein except that of wood & coal without the written consent first had and obtained from the said McIntire or his assigns. He further agrees to pay all bills for gas used on or about said premises, and all bills for water rent chargeable against the house during said tenancy. He agrees to give said McIntire or his assigns at least thirty days' notice of any intention to remove from said premises, and at the expiration of his tenancy will deliver *will deliver* up the same in like good order in which they now are, ordinary wear and tear and casualties by fire and unavoidable accident only excepted. He further agrees that if any month's rent shall not be paid when the same shall be or become due and payable as hereinbefore provided, (whether demand shall have been made for the same or not,) or if any portion of one month's rent be due and unpaid at
835 any time, or if he shall in any other respect violate any of the conditions and covenants contained in this agreement, then it shall be lawful for the said McIntire to re-enter and take possession of said premises forthwith, the said Pryor hereby ex-

pressly waiving all right to claim a thirty day's notice or other legal notice to remove from said premises, and agreeing that the summons provided for in sections 684 and 685 of the Revised Statutes of the District of Columbia may be served by affixing a copy of same upon the above-described premises, personal or other service of said summons being hereby expressly waived.

It is further understood and agreed that the covenants and agreements contained in this agreement are binding on the said Pryor & his legal representatives, and no waiver of one breach of any covenant herein shall be construed to be a waiver of the covenant itself or of any other breach thereof.

Witness *my* hand- the day and year aforesaid.

THOMAS PRYOR.
EDWIN A. McINTIRE,
Agent for Martha McIntire.

Witness- at signing:
WM. HELMICK.
FLOYD HARLESTON.

I hereby approve of this lease Thursday, May 5, 1881.
MARTHA McINTIRE, *Owner.*

Indorsed: No. 560. Agreement of Thomas Pryor, house No. 108 F St. N. W.; rent, $6, due 4th of each month, in advance; first payment, May 4th, '81.

836 EXHIBIT A. H. No. 17.

No. 3140. WASHINGTON, D. C., *October* 4, 1887.

B. T.

Riggs & Co.

Pay to H. Jenison or order one hundred dollars.
$100. E. A. McINTIRE.

Indorsed: H. Jenison.

This indenture, made this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and eighty-seven (1887) by and between Hartwell Jenison of the city of Washington in the District of Columbia, and Malvina E. Jenison his wife of the first part, and Martha McIntire of the city of Philadelphia of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one hundred dollars in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, quitclaimed, and conveyed, and do by these presents grant, bargain, sell, alien, release, quitclaim and convey unto the said party of the second part her heirs and assigns forever all that certain piece or parcel of ground in the city

of Washington aforesaid known as part of lots twenty-one (21) and — (22) in square number five hundred and sixty-nine (569) particularly described in deed from Mary C. Pryor *et vir* to Edwin A. McIntire dated May 2, A. D. 1880, and recorded in Liber 941 folio 449 *et seq.*, together with all claim for drawback or rebate on account of special taxes thereon and together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining, and all the re-
837 mainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said piece or parcel of ground.

To have and to hold the said lot or piece of ground and premises and appurtenances unto the said party of the second part her heirs and assigns forever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

HARTWELL JENISON. [SEAL.]
MALVINA E. JENISON. [SEAL.]

Signed, sealed, and delivered in the presence of—
M. C. HOOKER,
As to H. Jenison.
MARY E. LOGAN,
JOHN DAY SMITH,
As to Malvina E. Jenison.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, M. C. Hooker, notary public in and for the District aforesaid, in the said United States of America, do hereby certify that Hartwell Jenison, party to a certain deed bearing date on the 27th day of September, A. D. 1887, and hereunto annexed, personally appeared before — in the District aforesaid, the said Hartwell Jenison being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notorial seal this 27th day of September, A. D. 1887.

[SEAL.] M. C. HOOKER,
Notary Public.

838 STATE OF MINNESOTA, } ss:
County of Hennepin, }

I, John Day Smith, a notary public in and for the county and State aforesaid, do hereby certify that Malvina E. Jenison, party to a certain deed bearing date on the twenty-seventh day of September, A. D. 1887, and hereto annexed, personally appeared before me as notary as aforesaid, the said Malvina E. Jenison being the wife of Hartwell Jenison, of Washington, D. C., and being personally well known to me to be the person who executed the said deed, and

being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, the said Malvina E Jenison acknowledged the same to be her act and deed and declare- that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notorial seal this 30th day of September, A. D. 1887.

JOHN DAY SMITH,
Notary Public, Hennepin Co., Minnesota. [SEAL.]

STATE OF MINNESOTA, }
Hennepin County, } ss:

I, E. J. Davenport, clerk of the district court for the county of Hennepin, fourth judicial district of the State of Minnesota, the same being a court of record, do hereby certify that John Day Smith, whose name is subscribed to the certificate of proof or acknowledgement of the annexed instrument, was at the date thereof a notary public, residing in said county, and duly authorized to take the same, and that I am well acquainted with the handwriting of the said notary, and verily believe that the signature to the said certificate is genuine, and that said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Minneapolis, in said county, this 30th day of September, A. D. 1887.

E. J. DAVENPORT, *Clerk,*
By H. J. ALMOND, *Deputy.*

839 EXHIBIT A. H. No. 18.

Contract, in Duplicate, between Medford & Waldron & Miss Martha McIntire.

Agreement and specification for building two houses on F-street front and two houses on the rear or alley front of a certain lot 26 x 100 known as parts of lots 21 & 22, in square 569, Wash., D. C., to be built by us for thirty-three hundred dollars ($3,300).

Brick-work.—All the bricks to be of good merchantable bricks laid in good mortar. The fronts of the houses on F street to be of select red brick with struck joints to resemble press-brick work. The front to be ornamented in like manner as new houses now being built at the N. E. corner of 10 & E southwest. Arch brick in cellar & foundation with a course of slate in all the houses to be laid between two beds of cement and at least nine inches above the level of the ground. First story to be nine feet in the clear second story to be 8 ft. 4 in. in the clear. All heading courses to be jointed through & through & to be covered on inside with cement before plastering thereon. Brick walks to be laid to back gates, to wood shed & from front steps.

Cellar.—In the F-street houses, cellars are to be dug under the front rooms the full size of the room, the same to be concreted and properly sewered and with a window at least two feet high open above the level of the ground and to be provided with iron grate, wire screen and glass window.

Carpentering.—Joice to be 2 x 8 and bridged, ceiling joice to be 2 x 6 and rafters 2 x 6 to rest on purline in centre roofing boards. Studding to be 2 x 3 (and 3 x 4 for openings) bridged; floors to be good No. 2 Virginia pine bridged, inside blinds on F-street front and outside blinds for all other windows. Front doors double worked with tran-
840 som, vestibule doors with figured glass & transom & transom to other doors. All the doors, windows & trimmings to be of white pine No. 1 quality free from sap & wormholes, mouldings around windows and doors to be 4 inches wide, four bracket shelves in each house 5½-inch washboards, dresser in kitchen, wood sheds to rear of houses of width of lot with tin roof. Fences to be placed between the yards of the houses bordering the alley. Closets above stairways & under stairway in all four houses.

Cornice.—The cornice to be of bricks of some fancy design to be suggested by Miss McIntire with frame crown moulding.

Slate mantels.—To be placed in the front rooms of the F St. houses with latrobe stoves—"Balto. Sun" or some other equally good latrobe.

Plumbing.—To be done as per plans; submitting to building regulations. French bath tub with hot & cold water & hopper closets with tanks in the bath-rooms of the F-street houses and plain sink 14 x 24 with brackets, boiler, stand &c. connected with good portable range (of equal merit with the "Paragon" portable range No. 7) in the kitchens of each of said F-street houses. Water and sewer and closet to be placed in the yards of the rear houses on the said premises as required by the building regulations.

Gas pipes to be laid in two front houses, sewer, gas and water service to be laid and connected.

Tin-work.—To be of good charcoal tin, well soldered, with gutter and down spouts properly connected & of sufficient capacity to serve the purpose of readily carrying off the rain from the premises.

Painting.—To be of good material, painted with three coats of good paint or to be stained & varnished if Miss McIntire pre-
841 fers, tin roof to be also painted with two good coats and gilt numbers to be placed on the transoms of the front houses with tin numbers on the rear houses.

Plastering.—To be of two-coat work on the front houses with good lime and river sand. Plastering in the rear houses to be of two-coat work same material.

Hardware.—To be similar to that used in No. 67 L street, northwest, Wash., D. C.

In all other particulars not herein enumerated the houses

on the F-street front are to be finished and built in substantially the same manner as the house No. 67 L street, northwest, Wash'n D., C., and the alley houses substantially in the same manner as the middle house in the row recently built in Richardson place by Messrs. Medford & Waldron for Mr. Wm. Wood. In every particular the said houses are to be built and finished in accordance with the building regulations and the rules and regulations in reference to plumbing &c., in the District of Columbia. And all the workmanship and material to be done and furnished in good substantial style and finish and in workmanlike manner.

MEDFORD & WALDRON. [SEAL.]

Washington, D. C., Oct. 1, '86.

The above is accepted by me.

MARTHA McINTIRE. [SEAL.]

Witness:
E. A. McINTIRE.
EMMA T. McINTIRE.

842 EXHIBIT A. H. No. 19.

Exhibit A. H. No. 19 is a policy of insurance in the Union Insurance Company of Philadelphia, Pa., dated December 9, 1886, for 5 years, and signed by C. Heiskell, president; E. A. McIntire, agent, and recites: "By this policy of insurance the Union Insurance Co. of Philadelphia, in consideration of the receipt of $14.40, do insure Martha McIntire against loss or damage by fire to the amount of $2,400, being $800 on each of her two 2-story brick dwellings situated at 108 and 110 F St. northwest, Washington, D. C., and $400 on each of her two 2-story brick dwellings fronting on Madison alley to the rear thereof; privilege to finish said houses in 60 days." Then follow the usual insurance covenants. Said policy is in the handwriting of E. A. McIntire.

843 EXHIBIT A. H. No. 20.

The Central National bank.

PHILADELPHIA, *March 21st*, 1891.

Miss Martha McIntire, Washington, D. C.:

Your favor of 20th inst. received. Of course I remember you and your brother very well & I recall the time that you put the money here.

Our books show that Sept. 5th, 1881, you made the first deposit.... ..... $500
May 20th, 1882..... 6,319

$6,819

You drew July 19th, 1882 ..... $4,925
" " Dec. 2d, 1882 1,894
$6,819

thus closing the ac.

I trust this information will serve your purpose.

Kind regards to Ed.

Yours very truly,

T. S. DE BOW.

EXHIBIT A. H. No. 21.

Mr. Edwin A. McIntire, trustee, to J. T. Coldwell, Dr., real-estate broker & auctioneer, No. 806 F street northwest; removed to 515 Seventh street.

1881.

June 17. To auctioneer's services, sale of part lots 21 & 22, sq. 569, to H. Jenison, at 31c. pr. sq. ft. $25 00

Rec'd p'ym't, J. T. COLDWELL, *Auc.*

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EXHIBIT A. H. No. 22.

PHILADA., *Dec.* 23, 1874.

Rec'd of Martha McIntire ten hundred and sixty-two dollars in promissory notes and eight hundred and $\frac{50}{100}$ dollars in legal-tender notes (in all eighteen hundred and sixty-two and $\frac{50}{100}$ dollars).

$1,862.50.

E. A. McINTIRE,
Per H. McINTIRE.

EXHIBIT A. H. No. 23.

$1,400. WASHINGTON, D. C., *May 16th*, 1881.

At sight pay to the order of J. A. Ruff, cashier Central National Bank of Wash'n, D. C., fourteen hundred dollars, value received, and charge the same to the account of E. A. McIntire.

[E. A. McINTIRE.]*

[To Miss Martha McIntire, No. 871 North 8th St., Philadelphia.]*

Endorsed: Pay P. A. Keller, Esq., cashier, or order, for collection. J. A. Ruff, cash. P. A. Keller, cas.

[* Erased in copy.]

845 EXHIBIT A. H. No. 24.

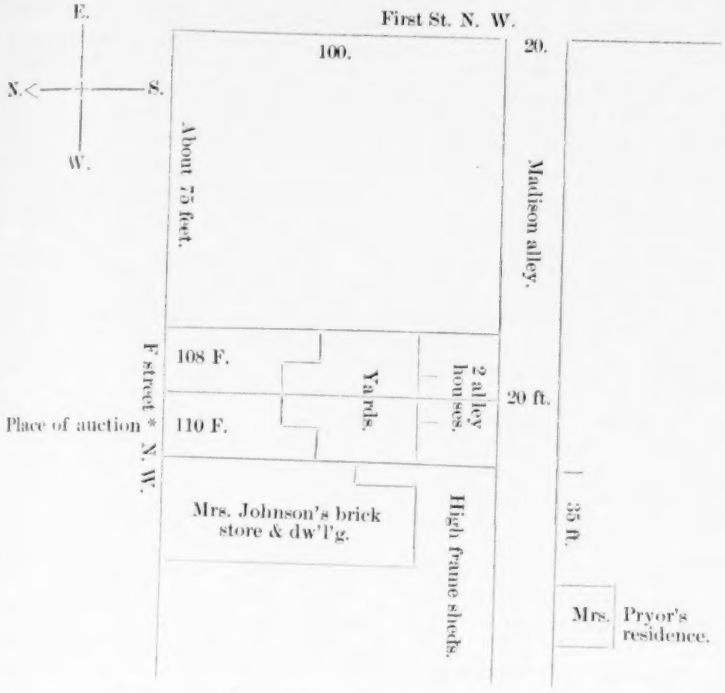


EXHIBIT A. H. No. 25.

This indenture, made this nineteenth day of April, in the year of our Lord one thousand eight hundred and eighty-two by and between Hartwell Jenison of the city of Washington in the District of Columbia and Malvina E. Jenison his wife of the first part, and Emma Taylor of the city of Philadelphia in the State of Pennsylvania, party of the second part:

Witnesseth, that the said parties of the first part, for and in consideration of the sum of four hundred and twenty-five dollars, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents, grant, bargain, sell, alien,
846 enfeoff, release, and convey unto the said party of the second part, her heirs and assigns, forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises, known and distinguished as and being part of lots numbered twenty-one

(21) and twenty-two (22) in square numbered five hundred and sixty-nine (569) described as follows beginning for the same at a point on F street north, distant nineteen (19) feet from the northeast corner of lot numbered twenty (20) in said square, thence running east on the line of "F" street twenty-six (26) feet thence south one hundred (100) feet to a twenty-feet-wide alley, thence west along the line of said alley twenty-six feet, thence north one hundred (100) feet to the place of beginning.

Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said parties of the first part, of, in, to, or out of the said pieces, or parcels of land and premises.

To have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part her heirs and assigns, to her or their sole use, benefit, and behoof forever.

And the said parties of the first part, for themselves jointly and severally, and for their heirs, executors, and administrators, do hereby covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that they the said parties of the first part and their heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, her heirs and assigns,
from and against the claims of all persons claiming or to
847 claim the same, or any part thereof, by, from, under, or
through them, either or any of them.

And further, that they, the said parties of the first part, and their heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, her heirs or assigns, as the said party of the second part, her heirs or assigns, or her counsel learned in the law shall advise, devise or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

HARTWELL JENISON. [SEAL.]
MALVINA E. JENISON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAS. A. TAIT.

DISTRICT OF COLUMBIA, *ss:*

I, James A. Tait, a notary public in and for the District aforesaid, do hereby certify that Hartwell Jenison and Malvina E. Jenison,

his wife, parties to a certain deed bearing date on the nineteenth day of April, A. D. 1882, and hereunto annexed, personally appeared before me, in the District aforesaid. The said Hartwell Jenison and Malvina E. Jenison, who executed the said deed, acknowledged the same to be their act and deed, and the said Malvina E. Jenison, being of full age and by me examined privily and
848 apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this nineteenth day of April, A. D. 1882.

JAS. A. TAIT, [SEAL.]
Notary Public.

Endorsed: Deed from H. Jenison & wife to Emma Taylor. Received for record on the 21 day of April, A. D. 1882, at 11.40 o'clock a. m., and recorded in Liber No. 1003, folio 188 *et seq.*, one of the land records of the District of Columbia, and examined by Geo. F. Schayer, dep. recorder.

849 EXHIBIT A. H. No. 26.

This indenture, made this twenty-ninth day of June in the year of our Lord one thousand eight hundred and eighty-one (1881), between Hartwell Jenison of the city of Washington in the District of Columbia, and Malvina E. Jenison his wife of the first part, and Edwin A. McIntire, of the same place, trustee, of the second part:

Whereas, the said Hartwell Jenison stands justly indebted unto Emma Taylor in the sum of four hundred and twenty-five dollars money loaned and advanced, has executed and delivered his certain promissory note of even date herewith drawn for said sum and payable in one year after date to the order of the said Emma Taylor with interest until paid at the rate of eight per cent. per annum until paid, payable quarterly, and being desirous to secure the punctual payment of said note when and as the same shall respectively become due and payable, with all interest and costs due and accruing thereon, they therefore execute these presents.

Now therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and for the sum of one dollar in lawful money of the United States, to them in hand paid by the party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfoeffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfoeff, release and convey unto the said party of the second part, his heirs and assigns the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises known and distinguished as and being part of lots numbered twenty-one (21) and twenty-two (22) in square numbered five hundred and

sixty-nine (569) beginning for the same at a point on "F"
850 street north distant nineteen (19) feet from the northeast corner of lot numbered twenty (20) in said square, thence running east on the line of "F" street twenty-six (26) feet thence south one hundred (100) feet to a twenty-feet alley, thence west along the line of said alley twenty-six feet thence north one hundred (100) feet to the place of beginning, together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise, however, of the said parties of the first part, of, in, to, or out of the said described real estate and premises.

To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said Hartwell Jenison, his heirs or assigns, to use and occupy the said described premises, and the rents, issues and profits thereof, to take, have, and apply, to and for his and their sole use and benefit until default be made in the payment of said note or any instalment or interest thereon of any proper cost, charge, commission, half commission or expense in and about the same.

And upon the full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half commissions and expenses, at any time before the sale herein provided for, to release and reconvey the said described premises unto the said Hartwell Jenison his heirs or assigns, at his or their cost.

And upon his further trust, that upon default being made in the payment of said note or any instalment of interest thereon or any proper cost, charge, commission, half commission or expense in and about the same, then and at any time thereafter, to sell the said described real estate and premises at public auction, upon such
851 terms and conditions and at such time and place and after such previous public advertisement as the said party of the second part, his heirs, or the trustee acting in the execution of his trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation a commission of five per cent., on the amount of the said sale or sales: Secondly to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder if any, to said Hartwell Jenison, his executors, administrators or assigns.

And the said Hartwell Jenison doth hereby agree, at his own cost, during all the time, wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due and to keep the said improvements insured against fire in some responsible fire insurance com-

pany to the satisfaction of said party of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to pay said taxes and assessments or to insure, any party secured hereby may pay said taxes and assessments or may have said improvements insured and the expenses thereof shall be a charge hereby secured and bear like interest, as the matter secured. And upon any such failure to pay said taxes and assessments, or to insure, the said party of the second part, his heirs may sell the said described real estate and premises, and apply the proceeds of said sale as hereinbefore directed.

And it is expressly provided, that if said property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half of the commission above provided, to be computed on the amount of the debt hereby
852 secured, and the same is hereby secured.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

HARTWELL JENISON. [SEAL.]
MALVINA E. JENISON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAS. A. TAIT.

UNITED STATES OF AMERICA, }
District of Columbia. }

I, James A. Tait, a notary public in and for the District aforesaid, do hereby certify that Hartwell Jenison — Malvina E. Jenison, *E. Jenison*, his wife, parties to a certain deed bearing date on the twenty-ninth day of June, A. D. 1881, and hereto annexed, personally appeared before me, in the District aforesaid, the said Hartwell Jenison and Malvina E. Jenison, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Malvina E. Jenison, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notorial seal this twenty-ninth day of June, A. D. 1881.

JAS. A. TAIT, [SEAL.]
Notary Public.

853 Indorsed: 14. Deed of trust. H. Jenison *et ux.* to E. A. McIntire, trustee. Received for record on the 11 day of July, A. D. 1881, at 2.20 o'clock p. m., and recorded in Liber No. 971, folio 494 *et seq.*, one of the land records for the District of Columbia, and examined by Geo. F. Schayer, dep. recorder. Released to Martha McIntire Ap'l 15, '86.

854 EXHIBIT A. H. No. 27.

$500. WASHINGTON, D. C., *May 2d*, 1876.

Two years after date we, jointly and severally, promise to pay to the order of George E. Emmons five hundred $\frac{00}{100}$ dollars for value received, with interest, payable semi-annually, at ten per cent. per annum until paid. Payable at ——.

[THOMAS PRYOR.]*
[MARY C. PRYOR.]*

No. 6046. Due ——.

Residence or place of [business, F St. bet. 1st & 2d N. W.]*

[Written across the face:] Paid.

Endorsed: Pay to order of [H. Jenison]* without recourse to me. George E. Emmons. [H. Jenison.]* Int. due Nov. 2, '76, $25.00. Paid Nov. 10, '76. Int. due May 9, '77, $25. Paid May 7th. Int. due Nov. 1, '77. Paid Nov. 9, $25.00. Interest due May 2, '78. Paid $25.00, and also $50 paid on ac. of principal. Int. due Nov. 1, '78. Paid Nov. 9, $22.50. Int. due May, '79. Paid May 6, $22.50. Int. due Nov. 1, '79. Paid Nov. 8, '79. Paid.

855 EXHIBIT A. H. No. 28.

Office of Edwin A. McIntire, real-estate broker and attorney-at-law, No. 918 F street northwest.

WASHINGTON, D. C., *Sept. 19th*, 1887.

Miss Emma Taylor:

There is a matter of some importance here that necessitates my communicating with you or sending on to you for an affidavit. Please let me hear from you as to your exact address.

Resp'y, &c., E. A. McINTIRE.

(Envelope.)

E. A. McIntire, Real-estate broker, No. 918 F St., Washington, D. C.

General delivery, Sep. 20, 1887. F.

Washington, Sep. 19, 9 p. m., '87.

(Stamp.)

Miss EMMA TAYLOR, Pittsburg, Penna.

[Written across the face:] Returned to writer.

[* Erased in copy.]

856 EXHIBIT A. H. No. 29.

This indenture, made this eleventh day of January, in the year of our Lord, one thousand eight hundred and eighty-two (1882) by and between Margaret Eller and her husband Jacob Eller, both of the city of Washington in the District of Columbia of the first part, and Emma Taylor of the city of Philadelphia, in the State of Pennsylvania party of the second part:

Witnesseth, That the said parties of the first part, for and in consideration of the sum of ten dollars, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, her heirs and assigns, forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises known and distinguished as and being lot numbered forty-three (43) in the subdivision of square numbered six hundred and fifteen (615). Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, either at law or in equity, of the said part- of the first part, of, in, to, or out of the said piece or parcel of land and premises.

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their sole use, benefit, and behoof forever.

857 And the said parties of the first part, for themselves and for their heirs, executors, and administrators, do hereby covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that they the said parties of the first part and their heirs shall and will warrant and forever defend the said piece or parcel of land and premises and appurtenances, unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through them either or any of them and against all other persons whomsoever.

And further, that they, the said parties of the first part, and their heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances, unto the said party of the second part, her heirs or assigns, as the said party of the second part, or her heirs

or assigns, or her counsel learned in the law shall advise, devise, or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

her
MARGARET x ELLER. [SEAL.]
mark.
JACOB ELLER. [SEAL.]

Signed, sealed, and delivered in the presence of—

E. J. SWEET.
GEORGE F. BLUECHER.

DISTRICT OF COLUMBIA, *ss:*

I, Edwin J. Sweet, a notary public in and for the District aforesaid, do hereby certify that Jacob Eller and Margaret Eller, his wife, parties to a certain deed bearing date on the eleventh
858 day of January, A. D. 1882, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Jacob Eller and Margaret Eller being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Margaret Eller, being of full age and by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this fifteenth day of April, A. D. 1882.

EDWIN J. SWEET,
[SEAL.] *Notary Public.*

Endorsed: Deed from Margaret Eller and her husband, Jacob Eller, to Emma Taylor. Received for record on the 19 day of April, A. D. 1882, at 3.10 o'clock p. m., and recorded in Liber No. 1003, folio 149 *et seq.*, one of the land records of the District of Columbia, and examined by Geo. F. Schayer, dep. recorder.

859 EXHIBIT A. H. No. 30

Is a copy book such as is used in writing schools, and is entitled "Spencerian System of Penmanship." It is impracticable to copy it in the record.

EXHIBIT A. H. No. 31

Consists of a batch of checks fastened together by a brass paper-fastener, and are so covered with endorsements, erasures, and punctures that it is impracticable to reproduce them in the transcript.

EXHIBIT A. H. No. 32

Is a copy book such as is used in writing schools, and is entitled "Potter & Hammond's System of Business Penmanship." It is impracticable to reproduce it in the transcript.

EXHIBIT A. H. No. 33

WASHINGTON, D. C., *Dec. 13th*, 1886.

Mr. Medford & Waldron bought of T. W. English, dealer in down-river sand and gravel, corner 1st and F streets southwest.

6 loads of sand at 80c.; full amount $4 80

Received payment, T. W. ENGLISH.

860 EXHIBIT A. H. No. 34

WASHINGTON, D. C., *Feb.* 8, 1887.

Messrs. Medford and Waldron to J. F. Nolan & Co., Dr., improved asphalt-concrete pavers & cement-workers. Office and works, North Capitol St. bet. M street and N. Y. Ave.

Feb. 3, to concreting (2) houses on F St. bet. First and 2nd N. W. as per contract..... $18 00

Received payment, JAMES F. NOLAN AND CO.
R.

EXHIBIT A. H. No. 35

WASHINGTON, D. C., *December* 31, 1886.

Mr. Medford — Waldron to Kohl, O'Donnell & Co., Dr., tin, copper, and sheet-iron workers, 1311 Seventh street N. W.

For tinning two houses on F St. and two in all-y on the same lot, bet. First and 2 St. N. W., total amount.....$105 00
By casch on order..... 50 00

Balance due..... $55 00

Received payment,

KOHL-O'DONNELL CO.

861 For value received we hereby have agreed to release all liens which we have or might have on four houses erected on lots 21 and 22, in square 569 (being upon F street N. W. and on Madison alley between 1st & 2nd streets northwest), Washington, D. C., by reason of materials furnished for the roofing of said houses, and we do now, by these presents, release and forever quitclaim unto Martha McIntire, her heirs and assigns, all and all manner of liens,

claims, and demands whatsoever which we have or might or could have on or against the said houses and premises for material furnished as aforesaid.

Witness our hands & seals this 3d day of Jan'y, A. D. 1887.

KEEN & HAGERTY, [SEAL.]
Balto., Md.

Messrs. Keen & Hagerty, No. 30 S. Calvert St., cor. Water, Balto., Md.

D'R SIR-: It is necessary for me to obtain such a release as the above, signed by you, for the materials used on the buildings above described. Will you please sign & return to me.

Please send this over with Mr. Meyers Monday and tell him to be at my place at 1 o'clock.

KOHL, O'DONNELL.

(Envelope.)

If not called for in 10 days, return to Keen & Hagerty, 30 S. Calvert St., Baltimore, Md., metals, tin, japanned, and stamped ware, &c.

Baltimore, Jan. 3, 7 p. m., 1887, Md. (Stamp.)

Mess. KOHL & O'DONNELL,
Wash., D. C.

862 EXHIBIT A. H. No. 36.

Medford & Waldron to Mushbach & Caton, trustees Cap. Pressed Brick Co.

1886.

Oct. 15.	To 13,000 @ 7	91 00
Oct. 16.	To 2,000 @ 7	14
		105 00
" "	Nov. 6, inc., [61,500]* 57,000 @ $7	399 00
		$504 00
	Cr. by c'sh	100 00
		$404 00

Rec'd pay't in full,

MUSHBACH & CATON, *Trustees.*

[* Erased in copy.]

EXHIBIT A. H. No. 37.

WASH., D. C., *Jan. 28th*, '87.

Mess. Medford & Waldron to J. B. Suit.

2 latrobes	60 00
2 ranges	32 00
	$92 00

furnished on F St. between 1st & 2nd N. W.

This bill is correct.

MEDFORD & WALDRON.

Rec'd paym't.

J. B. SUIT.

Feb. 19th, '87.

863 EXHIBIT A. H. No. 38.

WASHINGTON, D. C., *Jan.* 19, 1887.

Mess. Medford & Waldron bought of Church & Stephenson, dealers in all kinds of lumber, cor. Maryland Ave. and 8th street S. W.

7 dr. 1⅜ x 1⅜ 16 W. P	1 40	
2 ps. 2 x 3 12	24	
1 " 3 x 4 16	22	
2 " 2 x 4 16	30	
		$2 16

EXHIBIT A. H. No. 39.

WASHINGTON, D. C., *Jan'y 3rd*, 1887.

Mr. Charles Medford to William H. West & Bro., F bet. 1st & 2nd Sts. N. W., Dr.

'86.						
Oct. 25.	To 70 No. 60 splayed	pressed	brick,	@	.06c..	4 20
"	" 116 No. 10	"	"	"	.06c..	6 96
"	" 40 No. 277	"	"	"	.10c..	4 00
Nov. 1.	" 14 No. 60 splayed	"	"	"	.06c..	84
						$16 00
M'ch 8.	To 1,000 hard, @ 8.50					8 50
						$24 50

864 EXHIBIT A. H. No. 40.

WASHINGTON, D. C., *Jan. 25th*, 1887.

Messrs. Medford and Waldron to Isaac B. Webster, Dr.

Per contract	$325 00
By cash	200 00
	$125 00
Stoves and fuel	6 00
Balance due to date for plastering 4 houses on F St. N. W., between 1st and 2nd	$131 00

ISAAC B. WEBSTER.

The above ac't is correct.

MEDFORD & WALDRON.

EXHIBIT A. H. No. 41.

Medford & Waldron to Wm. Harvey, bricklayer, Dr.

Bal. done on 4 houses, F St. bet. 1st & 2d Sts. N. W..... $114 00

Rec'd payment in full,

WILLIAM HARVEY.

Washington, D. C., Dec. 2d, 1886.

[On margin:] This bill of one hundred and fourteen dollars is the true balance due Mr. Harvey for bricklaying on the 4 houses on F St. and to the rear, & should be paid.
Dec. 7, '86.

MEDFORD & WALDRON.

EXHIBITS A. H. No. 42 TO 50, INCLUSIVE,

are certified copies of certain deeds hereinafter mentioned. On the back of A. H. No. 42 is the following certification: "This is to certify that this is a true and verified copy of an instrument as recorded in Liber No. 967, folio 180 *et seq.*, one of the land records of the District of Columbia. March 24, 1893. Geo. F. Schayer, deputy recorder of deeds." On the back of each of said exhibits is a similar certificate, excepting only as to the numbers of the liber and folio. The first of said Exhibits, A. H. No. 42, is a deed from Edwin A. McIntire, trustee, to Emma Taylor, dated the 1st day of April, 1881, and recorded April 28, 1881. The original of this deed is copied in the transcript. On the margin of the certified copy are the words, "Delivered to E. A. McIntire, July 2nd, 1881. R. R."

865 EXHIBIT A. H. No. 43.

G. C. S. Liber No. 992, folio 273 *et seq.* Del'd to E. A. McIntire Feb'y 21st, 1882. R. R.

G. W. F. Swarttzell to Emma Taylor. } Recorded January 20, A. D. 1882, 1.30 p. m. Deed.

This indenture made this twelfth day of January in the year of our Lord one thousand eight hundred and eighty-two (1882) by and between G. W. F. Swartzell of the city of Washington in the District of Columbia of the first part, and Emma Taylor of the city of Philadelphia in the State of Pennsylvania party of the second part, Witnesseth: That the said party of the first part for and in consideration of the sum of two thousand dollars, in lawful money of the United States to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and conveyed, and doth by these presents grant bargain sell alien, enfeoff, release and convey unto the said party of the second part, her heirs and assigns forever the following-described real estate situate in the city of Washington District of Columbia, to wit: all that certain piece or parcel of land and premises known and distinguished as and being part of lot twenty-one 21 in square seventy-seven (77) and beginning at a point on the south line of north "I" street seventeen feet (17) feet eastwardly from the northwestern corner of said lot, thence running eastwardly eighteen feet, thence southwardly on a line at right angles with the said street ninety feet eleven inches, thence west eight feet seven and one-half inches, thence south to the south line of said lot, thence west nine feet four and one-half inches, thence north to the place of beginning. Together with all the improvements, ways, easements, rights, privileges, appurtenances and
866 hereditaments to the same belonging or in anywise appertaining, and all the remainders reversions, rents, issues and profits thereof and all the estate, right, title interest, claim and demand whatsoever either at law or in equity of the said party of the first part of, in, to, or out of the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said party of the second part, her heirs or assigns, to her and their sole use, benefit and behoof forever. And the said party of the first — for himself and for his heirs, executors and administrators doth hereby covenant, promise and agree to and with the said party of the second part her heirs and assigns, that he the said party of the first part and heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the said party of the second part her heirs and assigns, from and against the claims of all other persons claiming or to claim the same, or any part thereof, by, from, under or through him, them or any of them, and further that he the said

party of the first part and his heirs shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part her heirs or assigns, make, execute, deliver and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part her heirs or assigns, as the said party of the second part her heirs or assigns, or her counsel learned in the law shall advise, devise or require.

In testimony whereof the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

G. W. F. SWA*TRZELL*. [SEAL.]

Signed, sealed, and delivered in the presence of—

WM. HELMICK.

867 DISTRICT OF COLUMBIA, *ss:*

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that G. W. F. Swartzell, party to a certain deed bearing date on the twelfth day of January, A. D. 1882, and hereunto annexed, personally appeared before me, in the District aforesaid, the said G. W. F. Swartzell being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this thirteenth day of January, A. D. 1882.

WM. HELMICK,
Justice of the Peace. [SEAL.]

Indorsed: Fee, $1.50. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 992, fol. 273 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C. (Seal.) March 24, 1893. Geo. F. Schayer, dep. recorder of deeds.

868 EXHIBIT A. H. No. 44

Is a certified copy of a deed, A. H. No. 29, already printed in transcript. On the margin of the certified copy are the words, "Delivered to E. A. McIntire June 5, 1882. R. R."

EXHIBIT A. H. No. 45

Is a certified copy of a deed from Jenison to Emma Taylor, being the same deed heretofore copied in the transcript as Exhibit A. H. No. 25. On the certified copy are the words, "Delivered to E. A. McIntire June 5, 1882. R. R."

EXHIBIT A. H. No. 46

Is a certified copy of a deed from Willis Herndon *et ux.* to Emma Taylor, dated on the 6th day of May, 1882, recorded June 6, 1882. It conveys in fee to the grantee part of lot numbered 4, in square 154. On the margin of said certified copy are the words, "Delivered to E. A. McIntire June 7, 1882. R. R."

EXHIBIT A. H. No. 47.

Liber 1009, folio 273. Del. to E. A. McIntire July 17, 1882. R. R.

Edwin A. McIntire, tr., to Emma Taylor. } Recorded June 26, A. D. 1882, 12.10 p. m. Release.

Know all men by these presents, that I, Edwin A. McIntire, of the city of Washington, D. C., as trustee under two certain deeds of trust from Willis Herndon, and wife, bearing date on the 3d day of September, 1880, and the 12th day of April, A. D. 1881, and recorded in Liber 949 fol. 375, and 965, fol. 493 &c. of the land records of the District of Columbia, for and in consideration of one
869 dollar, current money of the United States, to me in hand paid by Emma Taylor, of the city of Philadelphia, the alienee of said Herndon (receipt of which before the execution and delivery thereof, is hereby acknowledged), have released, remised, and conveyed, and do hereby release, remise, quitclaim and convey unto said Emma Taylor her heirs and assigns, the following real estate in the city of Washington, District of Columbia, to wit: All that part of lot numbered four in square numbered one hundred and fifty-four (154) described as follows: Beginning at the southeast corner of said lot four, and extending thence west, along the north side of R street, twenty-one feet eight inches; thence north ninety feet; thence east twenty-one feet eight inches; and thence south ninety feet to the place of beginning.

To have and to hold, the same, with the appurtenances unto, and to the use of said Emma Taylor, her heirs and assigns, fully released, and discharged from the effect and operations of said deed of trust, the indebtedness secured thereunder, having been cancelled in my presence before signing this release. Witness my hand and seal this tenth day of June A. D. 1882.

EDWIN A. McINTIRE, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

DISTRICT OF COLUMBIA, *ss:*

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Edwin A. McIntire, party to a certain deed bearing date on the tenth day of June, A. D. 1882, and hereto

annexed, personally appeared before me in the District aforesaid, the said Edwin A. McIntire being personally well known to me to be the person who executed the said deed, and acknowledged
870 the same to be his act and deed.

Given under my hand and seal this tenth day of June, A. D. 1882.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Endorsed: This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1009, fol. 273 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C., March 24, 1893. Geo. F. Schayer, dep. recorder of deeds. (Seal.)

EXHIBIT A. H. No. 48

Is a certified copy of a deed from Henry E. McIntire to Emma Taylor, dated Dec. 2, 1882, recorded same day; conveys to Emma Taylor for the sum of $200 sublot 81, in square 276. On the margin of said certified copy are the words, "Delivered to E. A. McIntire January 5, 1883. R. R."

871 EXHIBIT A. H. No. 49.

G. C. S. Liber 1043, folio 3. Del. to E. A. McIntire Aug. 6, '83. R. R.

Edwin A. McIntire, tra., to Emma Taylor. } Recorded May 16, 1883, 9.20 p. m. Trustee's deed.

This indenture, made this twenty-eight day of August, in the year of our Lord, on- thousand eight hundred and eighty-two (1882) between Edwin A. McIntire, of the city of Washington, in the District of Columbia, trustee, of the first part, and Emma Taylor of the city of Philadelphia, in the State of Pennsylvania, of the second part,

Witnesseth, that wher-as by deed dated September 7th A. D., 1881, Joseph E. Hayne, and wife, then of Beaufort, South Carolina, but previously of the said city and District, did grant and convey to the party of the first part, certain real estate in the city of Washington, District of Columbia, in trust, to secure the payment of a certain debt, and with power and authority in case of default in the payment of said debt, or the interest thereon, to sell said real estate, at public auction. All of which will appear from said deed, duly recorded in Liber 985, No.— folio 89, on- of the land records of said District, and said Joseph E. Hayne, and wife, having made default in the payment of said debt, and the legal holder of the note for said indebtedness having requested a sale of said real estate, and the said party of the first part, as trustee, having after previous advertisement of the time, manner, place and terms of sale, exposed said

real estate herein conveyed on the twenty-eight day of August, A. D., 1882, at public auction, at which said sale, said party of the second part, being the highest bidder for said herein-conveyed real estate, became the purchaser thereof, at and for the sum of five hundred dollars, which said amount hath been by her fully paid and satisfied to the said party of the first part, and the said party of the second part is entitled to a conveyance of said premises. Now
872 therefore, this indenture witnesseth that said party of the first part, for and in consideration of the premises aforesaid, and further the sum of five hundred ($500) dollars, in lawful money of the United States, to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof, is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey and confirm, unto the said party of the second part, her heirs and assigns forever. All that certain piece or parcel of ground in the said city of Washington, known as the northeast one-quarter part of lot thirty-one (31) in square three hundred and eighty-eight (388) being the east thirteen feet front on "E" street, southwest, of said lot, by a depth of sixty-two and one-half feet; together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, whatsoever, either at law or in equity, of the said party of the first part, of, in, and to the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises with the appurtenances, unto, and to the use of the said party of the second part, her heirs and assigns forever.

In testimony whereof, the said party of the first part, as trustee, as aforesaid has hereunto set his hand and seal, on the day and year first hereinbefore written.

EDWIN A. McINTIRE, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—

WM. HELMICK.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Wm. Helmick, a justice of the peace in and for the county
873 aforesaid, do hereby certify that Edwin A. McIntire, trustee, party to a certain deed bearing date on the twenty-eighth day of August, A. D. 1882, and hereunto annexed, personally appeared before me in the county aforesaid, the said Edwin A. McIntire being personally known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this first day of September, A. D. 1882.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Indorsed: Fee, $1.50. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1043, fol. 3 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C. (Seal.) March 24, 1893. Geo. F. Schayer, dep. recorder of deeds.

874 EXHIBIT A. H. No. 50.

Liber No. 1052, folio 489 *et seq.* Del. to E. A. McIntire Nov. 1st, 1883. R. R.

Edwin A. McIntire *et ux.* to Martha McIntire. } Recorded October 3rd, 1883, 3.30 p. m. Deed.

This indenture made this eighteenth day of December in the year of our Lord one thousand and eight hundred and seventy-nine (1879) between Edwin A. McIntire of the city of Washington in the District of Columbia and Lettie F. McIntire his wife of the first part, and Martha McIntire of the city of Philadelphia in the State of Pennsylvania of the second part, witnesseth, that said parties of the first part for and in consideration of the sum of two hundred and fifty dollars in lawful money of the United States to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part her heirs and assigns forever the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain part or parcel of land known and described as lot numbered seventeen (17) of Bramhall's recorded subdivision of lots I and A of a recorded subdivision of square south of square one thousand and fifty-nine (1059) together with all the improvements ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof, and all the estate, right, title, interest and claim whatsoever, either at law or in equity of the said parties of the first part of, in and to the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said party of the second part her heirs and
875 assigns to her and their sole use benefit and behoof forever.

And the said Edwin A. McIntire for himself his heirs, executors, and administrators doth hereby covenant, promise and agree to and with the said party of the second part her heirs and assigns, that he the said party of the first part and his heirs shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof by, from, under

or through him, them or any of them. And further that they the said parties of the first part and their heirs shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part her heirs or assigns make, execute deliver and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part her heirs or assigns, as the said party of the second part her heirs or assigns, or her counsel learned in the law shall advise, devise or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

E. A. McINTIRE. [SEAL.]
LETTIE F. McINTIRE. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

DISTRICT OF COLUMBIA, }
County of Washington, } ss:

I, Wm. Helmick, justice of the peace in and for the District aforesaid, do hereby certify that Edwin A. McIntire and
876 Lettie F. McIntire, his wife, parties to a certain deed bearing date on the eighteenth day of December, A. D. 1879, and hereto annexed, personally appeared before me in the county aforesaid, the said Edwin A. McIntire and Lettie F. McIntire being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Lettie F. McIntire, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this eighteenth day of December, A. D. 1879.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Endorsed: This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1052, fol. 489 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C. August 29, 1893. Geo. F. Schayer, dep. recorder of deeds. (Seal.)

877

EXHIBIT A. H. No. 51.

E. A. McIntire, Real-estate broker, No. 918 F St., Washington, D. C.

Mr. Pryor will please deliver to Mr. Mack the keys of No. 108 F St. N. W.

E. A. McINTIRE.

Sept. 24, '84.

EXHIBIT A. H. No. 52.

POSTAL CARD. Washington, Mar. 14, 9 p. m., '83, D. C. (Stamp.)

Nothing but the address can be on this side.

Mr. THOS. PRYOR,
108 F St. N. W.

(Reverse.)

E. A. McIntire, Real-estate broker, No. 918 F St., Washington, D. C.

Please call and pay rent.

3, 13, '83.

R'sp'y, E. A. McINTIRE,

918 *F St.*

878

EXHIBIT A. H. No. 53.

Statement Showing the Account of Martha McIntire with the Central National Bank, Philada., Pa.

Account opened in the individual ledger:

Sept. 5th, 1881.	By cash	$500
May 20th, 1882.	" "	109
" " " " "		6,210
Total		$6,819 00

Payments:

July 19, 1882	$4,925	
Dec. 2, 1882	1,894	
		$6,819 00

I certify that the foregoing statement is a correct transcript from the books of the bank.

T. S. DE BOW.
C.

EXHIBIT A. H. No. 54.

RIDGWAY HOUSE, PHILA., FRIDAY, *Oct.* 6, '93.

To the sec'y of the Phila. savings fund.

D'R SIR: This evening I have gotten wet in the rain, and feel that I am to have a return of chills, from which I have been severely suffering for several days.

I may not be able to meet Mr. Mackey when he calls upon you tomorrow in reference to the acc't of Martha McIntire, as I suggested to you today.

879 I will be there if I can, but if I feel myself unable to be present I hope, if he takes your testimony, you will remember that Martha McIntire had two books, # 149,850 and # 234,889, and she has no objection to his having a copy of the acc'ts in those two books.

Please bear in mind that Martha intended to consent to the account of Sarah J. McIntire being shown to him. Sarah J. McIntire has nothing whatever to do with this case, and as Martha's representative I object to Mr. Mackey having any information given him in regard to that acc't or any other account of my family except that embraced in # 149,850 and # 234,889.

Very resp'y, E. A. McINTIRE.

EXHIBIT A. H. No. 55.

The Western Union Telegraph Company.

* * * * * * *

607 Chestnut street.

Received at 40 P. CG. CN. 10, paid. 1150 A.
Dated Washington, D. C., 10, 7.

To Mr. Purvis, Phila. svg. fund:

Do not inform Mackey anything about Sarah J. McIntyre's matters.

MARTHA McINTYRE.

880 EXHIBIT A. H. No. 56.

Office of the Philadelphia Saving Fund Society.

No. 149,850.

Martha McIntire, 224 No. 20th St., book-sewer.

1866.		DR.	CR.
Sept. 24.	By cash	....	50
	Int.	....	60
	Balance	....	50 60

1867.				
Nov. 21.	By cash	....		100
	Int.	....		2 80
	Balance	....		153 40
1868.				
Nov. 23.	By cash	....		150
	Int.	....		7 80
	Balance	....		311 20
1869.				
Feb'y 15.	To cash	....	312 45	1 25

Called back by W. S. & W. G. B.

881 EXHIBIT A. H. No. 57.

Office of the Philadelphia Saving Fund Society.

No. 234,889.

Martha McIntire, 871 North Eight- St.; single.

		DR.	CR.
1874.			
June 30.	By cash	....	225
	Int.	....	5 40
1875.			
Jan. 1.	Balance	....	230 40
M'ch 29.	By cash	....	100
May 20.	" "	....	270
June 7.	" "	....	50
July 7.	" "	....	60
Sept. 29.	" "	....	20
	Int.	....	24 85
1876.			
Jan. 1.	Balance	....	755 25
" 15.	By cash	....	140
June 30.	" "	....	110
Sept. 29.	" "	....	60
	Int.	....	45 80
1877.			
Jan. 1.	Balance	....	1,111 05
" 13.	By cash	....	75
Aug. 29.	" "	....	100
	Int.	....	58 20
1878.			
Jan. 1.	Balance	....	1,344 25
	Int.	....	64 30
1879.	"	....	67 45
1880.	"	....	59
1881.	"	....	46 05
1882.	"	....	47 40

1883.	Int.	....		47 50
1884.	"	....		48 50
1885.	"	....		49 40
1886.	"	....		50 40
1887.				
Jan. 1.	Balance	....		1,824 25
Feb. 9.	To cash	....	1,825 75	1 50

W. S., 10, 7, '93.
Called back by W. G. B.

882 EXHIBIT A. H. No. 58.

Office of the Philadelphia Saving Fund Society.

No. 196,399.

Sarah J. McIntire, 1326 Parrish, teacher.

		DR.	CR.
1871.			
June 29.	By cash	....	150
Sep. 9.	" "	....	100
Oct. 28.	To "	240	
	Int.	....	2 30
1872.	Balance	....	12 30
	Int.	....	50
1873.	Balance	....	12 80
	Int.	....	50
1874.	Balance	....	13 30
	Int.	....	50
	Balance	....	13 80
1875.			
May 31.	By cash	....	300
July 7.	" "	....	125
	Int.	....	11 40
	Balance	....	450 20
1876.			
Jan. 15.	By cash	....	100
July 15.	" "	....	120
	Int.	....	28 40
	Balance	....	698 60
1877.			
June 27.	By cash	....	300
	Int.	....	40 55

1878.	Balance	....		1,039 15
	Int.	....		49 70
1879.	Balance	....		1,088 85
	Int.	....		52 10
1880.	Balance	....		1,140 95
	Int.	....		45 60
	Balance	....		1,186 55
1881.				
May 2.	To cash	1,196 60		10 05

Called back by W. S. & W. G. B.

P. A.

883 EXHIBIT A. H. No. 59.

Office of the Philadelphia Saving Fund Society, S. W. cor. of Washington square & Walnut street.

Pemberton S. Hutchinson, President. G. Colesberry Purves, Treasurer.

AUG. 25, 1894.

Received from Albert Harper, examiner, power of attorney—date, May 2, 1881—from Sarah J. McIntire to Martha McIntire for withdrawal of funds from the Philadelphia Saving Fund Society.

THE PHILADELPHIA SAVING FUND SOCIETY,
Per S. WOODWARD.

Exhibit A. H. No. 59, Pryor *vs.* McIntire.

Indorsed: Receipt for return of original thereof.

EXHIBIT A. H. No. 60.

Health office, registration department, room 517 city hall.

No. 2434. PHILADELPHIA, PA., *Aug. 29th*, 1893.

To all whom it may concern:

This is to certify that the following is a correct copy of the certificate of the decease of Sallie J. McIntire, filed in this department as directed by the State law:

1. Name of deceased, Sallie J. McIntire.
2. Color, white.
3. Sex, female.
4. Age, 32 years.
5. Married or single, single.
6. Date of death, Jan. 10th, 1881.

884 7. Cause of death, pulmonary phthisis.

E. M. SMITH, M. D.,
Residence, 842 *North 8th S.*

8. Occupation, ——.
9. Place of birth, Phila.
   Name of father, —— ——.
10. When a minor, ——.
   Name of mother, —— ——.
11. Ward.
12. Street and number, 871 N-th 8th S-.
13. Date of burial, Jan. 14th, 1881.
14. Place of burial, Mt. Peace cem'y.

D. H. BOWEN & SON, *Undertaker-*.

Residence *for* the health officer, ——.

[SEAL.] MOSES VEALE, *Health Officer.*

J. V. P. TURNER,
Chief Registration Clerk.

EXHIBIT A. H. No. 61.

Rec'd, Wash'n, D. C., Nov. 15, '80, of Mr. Pryor the sum of eighteen dollars for six months' interest, due 2d inst., on note for four hundred and fifty dollars, dated May 2, '80.

E. A. McINTIRE, *Trustee.*

EXHIBITS A. H. NOS. 62 AND 63

Are photographs, which it is impracticable to reproduce in transcript.

885 EXHIBIT A. H. No. 64.

WASHINGTON, D. C., *April* 14, 1887.

E. A. McIntire.

SIR: We have a claim for extra work due us as contractors for building of houses on F street and in rear thereof. There are also certain bills unpaid which are payable by you under said contract—that is to say:

H. Robinson	$35
—— Brooks	11 40
Wm. H. West & Bro.	24 50
—— Foutz	3 00
Church & Stephenson	2 16
—— McIntire	5
	$81 06

If you will within three (3) days from this date pay said bills in full we will relinquish all claim on said extra work, and you can, upon such payment, treat this paper as our absolute discharge of all our claims under said contract or for extra work. If, however, such payment is not made within said period, we must proceed by proper proceedings to enforce our claim for said extra work, and the

amount due under said bills must also be secured by proper proceedings.

MEDFORD & WALDRON.

886 *Opinion of Justice Hagner.*

Filed Dec. 29, 1894.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR *vs.* EDWIN A. MCINTIRE *et al.* } Equity. No. 12761, Docket 31.

ELIZABETH BROWN *vs.* EDWIN A. MCINTIRE *et al.* } Equity. No. 12977, Docket 31.

ANNIE M. ACKERMAN *vs.* EDWIN A. MCINTIRE *et al.* } Equity. No. 12978, Docket 31.

CATHARINE SOUTHEY *et al.* *vs.* EDWIN A. MCINTIRE *et al.* } Equity. No. 13034, Docket 32.

LAURA HAYNE *vs.* EDWIN A. MCINTIRE *et al.* } Equity. No. 13177, Docket 32.

Opinion of Justice Hagner.

887 These five cases have been heard together. The bill in the earliest case, the suit of Mary C. Pryor, was filed the 21st of October, 1890; the others at intervals up to the 12th of May, 1891.

Edwin A. McIntire is a defendant in each case, Martha in all the cases except that of Hayne, Emma Taylor in Pryor's, Brown's, and Ackerman's, Jenison to the Pryor bill, and Brouner in the Brown case.

Answers were filed by all these defendants to the original and amended bills except by Brouner and by Emma Taylor. An order of publication was passed in two of the cases against Emma Taylor, but there is nothing to show it was ever published, and no decree *pro confesso* was ever obtained against her.

Against Brouner no further proceedings seem to have been taken beyond making him a defendant to the Brown bill.

A large amount of testimony was taken in each case, all of which with reference to the McIntires and to Emma Taylor it was stipulated might be read in each suit, subject to just exceptions. As a result the mass thus applicable to each case is unusually large, and its proper adaptation to the particular issues became a matter of considerable difficulty.

In the view I have felt compelled to take of the entire litigation

it has become unnecessary to point out here in detail the application of the accumulated testimony to the many points of contention or to announce a decision upon the numerous and somewhat intricate questions of evidence presented in the course of the arguments, and I shall refer to the testimony only so far as may be requisite to the examination of what I consider the indispensable preliminary question in the controversy, which is whether the complainants have been guilty of unreasonable delay under the circumstances in the assertion of their supposed rights; and, if this be so, whether they have presented satisfactory explanations and excuses for whatever laches in the prosecution may be found to exist.

This inquiry properly meets us at the threshold of the
888 investigation, since the exercise of proper diligence in the prosecution of rights is the condition universally annexed to the right to relief in courts of equity. Familiar as this principle is, it may assist in the examination to recall here the language in which it has been expressed by the courts of the highest resort:

"Equity discountenances stale and antiquated demands, for the peace of society, by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights. It is not merely in analogy to the statute that a court of equity refuses to lend its aid to stale demands, but there must be conscience, good faith, and reasonable diligence to call into action the powers of this court. When these are wanting the court is passive and does nothing. Laches and neglect are always discountenanced."

(McKnight *vs.* Taylor, 1 How., 161.)

Wherever such delay appears on the face of the application it then becomes necessary, as expressed in 2 Wall., 87, Badger *vs.* Badger, that "the party who makes such an appeal should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim, how he came to be so long ignorant of his rights, and the means used by the respondents to fraudulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case, on his own showing, without inquiring whether there is a demurrer or formal plea of the statute of limitations contained in the answer."

In 7 Howard (829), Stearns *vs.* Page, Justice Grier said: "But as lapse of time necessarily obscures the truth and destroys the evidence of past transactions, courts of chancery will exercise great caution in sustaining bills which seek to disturb them. They will hold the complainant to stringent rules of pleading and evidence and require him to make out a clear case. Charges of fraud are easily made, and lapse of time affords no reason for relaxing the rules of evidence or treating mere suspicion as proof. If a
889 defendant can be compelled to open settled accounts to explain or prove each item, after a lapse of near thirty years, by general allegations of fraud—if the fraud can be proved by his inability to *il*lucidate past transactions after so great a length of

time, or by showing some slips of recollection, or by contradicting him in some collateral facts by the frail recollection of other witnesses—no man's property or reputation would be safe."

"A complainant seeking the aid of a court of chancery under such circumstances must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment—must specify how, when, and in what manner it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved. If a mistake is alleged, it must be stated with precision and made apparent so that the court may rectify it with a feeling of certainty that they are not committing another and perhaps greater mistake, and especially must there be distinct averments as to the time when the fraud, mistake, misrepresentation, or concealment was discovered and what the discovery is, so that the court may clearly see whether by the exercise of ordinary diligence the discovery might not have been before made."

In 103 U. S., 636, Hoyt *vs.* Sprague, the court remarks: "In such cases it is not merely a question as to what information respecting their rights parties do actually obtain, but as to what information they might have obtained had they used the means and opportunities directly at their command. Others, acting in good faith, also have rights—the world must move, and it is the interest of the community that controversies should have an end."

These principles have received further enforcement from the more recent decisions of the Supreme Court, commencing with the case in 143 U. S., 251, Hammond *vs.* Hopkins, where the antecedent cases received a careful examination. There can be no doubt the courts everywhere, of recent years, have shown an increasing disposition to listen to the defense of laches, and the citations I shall read from the latest reports of the Supreme Court afford con-
890 vincing proof of this statement. These cases, says the Supreme Court in 145 U. S., 373, Galliher *vs.* Cadwell, "all proceed upon the theory that laches is not, like limitations, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relation of the property or parties."

In 146 U. S., 99, Foster *vs.* Mansfie-d R. R. Co., Justice Brown says: "The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove, and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law, which demands not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts. Especially is this the case where the party complaining is a resident of the neighborhood in which the fraud is alleged to have taken place."

Again, in Johnston *vs.* Standard Mining Co., 148 U. S., 370, the same justice says: "While there is no direct or positive testimony that plaintiff had knowledge of what was taking place with respect to the title or development of the property, the circumstances were such as to put him on inquiry, and the law is well settled that

where the question of laches is at issue the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known to him were such as to put upon a man of ordinary intelligence the duty of inquiry."

In 150 U. S., 201, Lane *vs.* Locke, the court said, speaking by Mr. Justice Shiras: "Courts of equity, it has often been said, will not assist one who has slept upon his rights and shows no excuse for his laches in asserting them. The plaintiff's excuse in this instance that he preferred from prudential reasons to receive a salary from the defendant rather than to demand a royalty is entitled to a less favorable consideration by a court of equity than if his conduct had been that of mere inaction."

These cases are cited with approval by Mr. Justice Brewer in the most recent utterance of that court on the subject, 162 U. S., 416, Halstead *vs.* Grinnan. The courts, too, have relaxed the
891 older rule that laches is admissible as a defense only where the delay has been very prolonged. Adhering to the declaration that "each case must stand upon its own peculiar circumstances," they have, more especially of late years, sustained the defence in some cases where the delay has fallen short of the time fixed by the statute for suits at law.

This disposition of the courts is illustrated in 145 U. S., 373, Galliher *vs.* Cadwell. "The laches of the appellant," says the court, "is such as to defeat any rights which she might have had, even if these prior questions were determined in her favor; and in this respect it is worthy of notice that there has been in a few years a rapid and vast change in the value of the property in question. It is now an addition to the city of Tacoma. The census of 1880 showed that to be a mere village, the population being only 1,098. The census of 1890 discloses a city, the population being 36,006. Of course such a rapid increase during this decade implies an equally rapid and enormous increase in the value of property so situated as to be an addition to the city, and the question of laches turns not simply upon the number of years which have elapsed between the accruing of his rights, whatever they were, and her assertion of them, but also upon the nature and evidence of those rights, the change in value, and other circumstances occurring during that lapse of years. The cases are many in which this defense has been invoked and considered. It is true that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle pervades them all. They proceed upon the assumption that the party to whom laches is imputed has knowledge of his rights and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned, and that because of the change in condition or relations during this period of delay it would be an in-
892 justice to the latter to permit him to now assert them. A reference to a few of the cases in our own reports may not be out of place. In Harwood *vs.* Railroad Co., 17 Wall., 78, a delay of five years on the part of the stockholders in a railroad company in

bringing suit to set aside judicial proceedings regular on their face, under which the railroad property was sold, was held inexcusable. In Twin Lick Oil Company *vs.* Marbury, 91 U. S., 587, a director of a corporation who had loaned money to it and subsequently bought its property at a fair public sale by a trustee was protected in his title against the corporation, suing four years thereafter to hold him as trustee of the property for its benefit, it appearing in the meantime the property purchased had increased rapidly in value. In Brown *vs.* County of Buena Vista, 95 U. S., 157, a county was held barred by its laches from maintaining at the end of seven years a suit to set aside a judgment fraudulently obtained against it, and that, too, though it did not affirmatively appear that the supervisors of the county had knowledge of the existence of the judgment till about twenty months before the commencement of the suit. In Hayward *vs.* National Bank, 96 U. S., 611, a party who had borrowed money of a bank and deposited with it as collateral security certain mining stocks, which were sold by the bank upon his failure to repay the loan, was held barred by his laches in a bill to redreem, filed four years thereafter, the stocks in the meantime having greatly increased in value. In Holgate *v.* Eaton, 116 U. S., 33, a married woman who, on being informed of a contract made by her husband for the sale of an equitable interest in real estate held by her in her own right, repudiated it and refused for two years to perform it, was not permitted thereafter to maintain a bill for specific performance of the contract, the value of the property having depreciated. In Davidson *vs.* Davis, 125 U. S., 90, a bill to compel the specific performance of a contract to sell personal property upon the payment of a promissory note, payable at a date after the making of the contract, was dismissed on the ground of laches of
893 the complainant in waiting five years after the maturity of the note before filing his bill, the property in the meanwhile having increased in value. In Societé Foncieré *vs.* Milliken, 135 U. S., 304, a delay of two years in the commencement of proceedings to set aside a judgment for usury was adjudged fatal, the amount of the usury being small and the judgment having been enforced in the meantime by the sale of real estate." "But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitation, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced; an inequity founded upon some change in the condition or relations of the property or the parties."

To these citations by the court may be added the cases of 103 U. S., 636, Hoyt *vs.* Sprague, where relief was refused to two complainants who had respectively neglected to sue for nine and seven years after they had become of age, and 148 U. S., 370, Johnston *vs.* Standard Co., where relief was refused after delay of six years.

Several rulings of this description are found in the Maryland Reports which are deserving of particular notice, as the courts of that State have consistently adhered to the liberal application of the statute of limitations in actions at law laid down nearly forty years ago in 9 H. & G., Oliver *vs.* Gray, which treated that enact-

ment as creating a presumption of payment, which might be rebutted by acknowledgment that the debt was really unpaid, although such acknowledgments have been held insufficient for the purpose by the Supreme Court, which construed it as a statute of repose in Bell *vs.* Morrison. Nevertheless the chancery courts of Maryland afford many decisions supporting the defense of laches after short periods, as in Clabaugh *v.* Byerly, 7 Gill, 364, where relief was refused on a bill filed in February, 1844, to set aside a deed executed in 1842; in White *v.* White, 1 Md. Chancery, 53, where the
894 transaction occurred in 1840 and the bill was filed in 1846; in Hitch *v.* Fenby, 6 Maryland, 224, where there had been a delay of seven years; in Glenn *v.* Hebb, 17 Maryland, 260, after four years; in Nelson *v.* Hagerstown Bank, 27 Md., 51, after five years; in Hill *v.* Clagett, 48 Maryland, 223, on a bill filed in 1856 by a surviving partner against the representatives of a deceased partner, who died in 1856, for a settlement of copartnership dealings; and in 73 Md., 305, Amey *v.* Cockey, on a bill filed by a widow to set aside a deed less than five years after she had a right to sue.

In applying these principles to the cases before us it is proper first to consider the extent to which the several plaintiffs have observed the injunction that "conscience, good faith, and reasonable diligence must appear to call into action the powers of an equity court."

The bill asks in somewhat different forms for an accounting from Edwin A. McIntire for the proceeds of the several lots sold by him for the different owners; for an account from him and his sister for rents and profits of the said parcels of land; for a readjustment of the accounts of the several *cestui que trust.* in the different deeds of trust with the respective debtors, which are alleged to have been fraudulently adjusted by McIntire; for the cancellation of the various deeds, and for a recovery of possession of the lands from whoever may happen to be holding them and their restoration to the respective owners who were such when they were sold or to their descendants.

In the Pryor case it is alleged that McIntire, acting under a deed of trust from the owners, in June, 1881, sold the property therein described at public sale, after advertisement. There is no charge the amount realized was insufficient, but it is alleged that complainant's husband really became the purchaser at such sale; that Pryor and his wife remained in possession and continued to pay McIntire rent until September, 1884, upon his representation that he would apply the rent thus paid to the indebtedness due
895 on the purchase, and that when all should be paid he would convey the property to complainant; that "*that* complainant has only recently discovered that the sale was made without the knowledge, authority, or direction of the holder of the note secured by the trust," for the fraudulent purpose of securing the property to McIntire himself; that a few days after the sale McIntire conveyed the land to Jenison, the codefendant, secretly and unknown to Jenison and without his consent, authority, or knowledge, and in April, 1882, procured the execution by Jenison of a conveyance of

the property to one Emma Taylor, a fictitious person; that the subsequent conveyance in 1884 by Emma Taylor to Martha McIntire was fraudulent, as was also a quitclaim deed executed by Jenison in 1887 to Emma Taylor, and the consideration of $100 named therein is also false and was never paid to Jenison.

In an amendment filed a month later the complainant avers that "all of the foregoing facts have only been discovered by complainant within the past few months."

The sale took place in June, 1881; the bill was not filed until October, 1890, nine years and four months afterwards, a period within which any action at law to recover the balance alleged to be due by McIntire out of the proceeds of sale or for rents and profits would have been thrice barred.

Referring to the testimony only so far as it bears on the question of due diligence, it is proved that Pryor lived with the complainant, his wife, in the house, paying rent monthly to McIntire for three years after the sale, when the key was delivered by them to McIntire; that her husband survived until July, 1890; that in 1884 they removed to a house opposite and very near the property sold, and that she lives in that neighborhood still; that neither Pryor nor his wife ever made the deposit required by the admitted terms of sale or paid either the cash or either of the deferred instalments or demanded or received a deed; that they stood by and saw the property improved by buildings by Martha McIntire without
896 objection. The complainant also swears she met McIntire soon after the sale in Judiciary square (nine years ago) and intimated her dissatisfaction to McIntire with his proceedings at the sale. Jenison, the party secured and the codefendant who received a conveyance as purchaser after the sale, is a clerk in one of the departments and resided in Washington then and has lived there ever since, and the due execution of his deed to E. A. McIntire, recorded in July, 1881; of that to Emma Taylor, recorded in April, 1882, and of that to Martha McIntire, recorded in October, 1887, of the property so knocked down to him at the sale, is not disputed. A deed purporting to convey the property from Emma Taylor to Martha McIntire has been on record since October, 1886. It also appears that the indebtedness to Jenison, to secure which the trust to E. A. McIntire in May, 1880, was made, had its origin as far back as May, 1876, in a deed of trust from the Pryors to B. H. Warner and Henry McIntire, duly recorded.

It is not denied that in May, 1881 (before the sale), Pryor and wife had undertaken to convey the property to Martha McIntire in consideration of $5 and the assumption by her of the liens on the property by deed duly executed and acknowledged, which Martha McIntire refused to accept.

If the Pryors really believed the property was struck off to Thomas Pryor at the public sale in 1881, it was surely incumbant upon them to present to the proper court during all the intervening years their complaint as to the fraudulent conduct, of which they then had ample knowledge, if the complainant tells the truth in her bill, almost from the day of the sale; but they remained silent in

the face of this knowledge and in the light of all the circumstances before referred to.

That proper diligence was exhibited in the commencement of the Pryor suit cannot be successfully contended.

In this as well as in the Hayne case mention is made in the bill of the fact that the complainants are colored people and
897 of their asserted ignorance. It appears, however, they could all read and write. Hayne, who is a clergyman, seems to be a fairly educated man. The courts will be sedulous to protect persons in the condition described against imposition, but their color and alleged helplessness cannot be successfully invoked as a justification for making questionable or exceptional rulings against those who suffer to deal with them.

We have seen how explicitly the courts have declared that laggard complainants must set forth specifically what were the impediments to an earlier prosecution of their claims; how they came to be so long ignorant of their rights; the means used by the guilty party fraudulently to keep them in ignorance; with distinct averments of the time when the fraud was discovered; "that the court may clearly see whether by the exercise of ordinary diligence the discovery might not have been made before;" and, further, that it is all-important to consider "what information they might have obtained if they had used the means and opportunities directly at their command;" that the party should have used reasonable diligence to inform themselves of the facts, and he is chargeable with such knowledge as he might have obtained upon inquiry.

Evidently there was no sufficient compliance with these requirements in framing the bill. The complainant simply declares "she only recently discovered" certain alleged facts, among these that the sale was made by McIntire without the knowledge, &c., of Jenison, and that Jenison never received the $100, the consideration for one of the deeds (both of which assertions are admitted by Jenison to be incorrect), but there is no attempt at an explanation why this knowledge could not have been obtained at a much earlier day. Nor does any such explanation appear in the proof. That which was obtainable from others in 1890 would seem to have been equally obtainable from the same or similar sources in 1889, or during many years previously, for it is proved in the case that as far back as 1887 a bill had been filed in this court, No. 10745, equity, making
898 similar accusations that Emma Taylor was a myth instead of a real person, which remained on the docket of this court accessible to all until 1893, when it was dismissed by the complainant therein.

A similar delay appears to have attended the filing of the bill of Elizabeth Brown. It avers the execution by her mother, Barbara (who, it is charged, died in 1883), of a deed in trust to Edwin A. McIntire to secure an indebtedness on a note to one Brouner; that in April, 1881, there was an alleged sale by the trustee at public auction at which the property was knocked down to Emma Taylor, to whom the trustee executed a deed in April, 1881 (recorded in the same month); that Emma Taylor was not a real person, and her

name was used by McIntire to assist him in his fraudulent purpose to obtain the property for himself; that no deed had ever been delivered to her, and she made no claim to the lot; that Barbara Brown died shortly after the sale, wholly ignorant of the fraud perpetrated upon her, and complainant has only within the past weeks discovered the facts hereinbefore set forth as to the fraudulent sale and the deed executed in pursuance thereof.

The bill was filed on the 7th of February, 1891, nine years and ten months after the sale and conveyance to Emma Taylor.

After the answer of McIntire had been filed to the original bill an amendment was filed making Martha McIntire a party and attacking the validity of a deed purporting to be from Barbara Brown and Emma Taylor to Martha McIntire, dated April 28, 1881, recorded April 7th, 1891, and of another deed purporting to be from Emma Taylor to Martha McIntire, dated September 6th, 1884, recorded 7th of April, 1891, which had been filed with McIntire's answer. This amended bill denounced these deeds as fraudulent, and the complainant claimed to be reinstated in the property, and for an account, &c. It also submitted interrogatories to be answered by the defendants and averred the complainants did not know of the existence of the first-named deed until the filing of McIntire's answer, and that therefore the complainant did not make the said Martha McIntire a party before.

899 In May a further amendment was filed averring no public sale was ever made, but the entire proceeding was fraudulent; that "Barbara Brown died in 1885, wholly ignorant of the fraud perpetrated upon her, and that complainant has only within the past week discovered the facts as to the pretended sale and the deed executed in pursuance thereof." In this amended bill there is no waiver of oath in the answer.

The defendants answered under oath and denied all incriminating charges in the bill and amended bills, and respond to the interrogatories in the amended — propounded.

There is wanting in this bill any explanation why Barbara Brown should have neglected to institute proceedings to set aside the sale during her lifetime, if she disapproved of what was done, or why the complainant delayed so long the assertion of her claim; nor does the daughter say when or how she discovered that Emma Taylor was a myth, or why she could not have made the discovery sooner. Her mother lived near the land till her death, and her brother, Leonard Sinnemacher, was living in April, 1881, four doors from the house, which stands on a subdivision made by the brother and recorded in his name. Nothing could have been easier than for her to have consulted with this brother as to the alleged imposition upon her rights and procure his aid in obtaining a satisfaction from McIntire for any wrongs she had received at his hands. The records disclosed the execution of the deed from Barbara Brown to E. A. McIntire from June, 1880, and of that from McIntire to Emma Taylor, conveying the land, from April, 1881. That Barbara Brown received the $400 borrowed by her on the note to Brouner described in the deed of trust is not denied, and there is

nothing to show she ever paid any part of it, except by the sale of the land for that sum. That she was needing money about the time the deed in trust was given appears also from the deed of Peugh, trustee, and Barbara Brown to McIntire, recorded in October,
900 1880, conveying another lot to secure a note of $600 to Galliher; which facts are quite inconsistent with the brother's testimony that his sister at the time of the sale had a keg of gold in her house.

With these surrounding circumstances, notifying parties interested and summoning them to diligence in making their complaint known, there can be no doubt that supineness, instead of reasonable promptness, characterized the bringing of this suit, and that the bill contains no satisfactory explanation of that delay.

In the Ackerman case it is charged that complainant, wishing to raise some money in March, 1882, placed in McIntire's hands for sale a small lot, which shortly afterwards he reported he had sold for $300 to Emma Taylor, to whom Mrs. Ackerman executed a deed dated 24th of April, 1882, and duly recorded; that the price was not a fair one; that McIntire paid her only $75 from the proceeds; that on information and belief she avers Emma Taylor was not a real person or the real purchaser, but that the name was used fraudulently by McIntire to enable him to obtain the property for himself, and she submits that McIntire should not be allowed to retain the property, and prays the deed to Taylor may be cancelled and that an account of rents and profits may be decreed, and for a decree directing payment of whatever may be found due. E. A. McIntire and Emma McIntire, the two original defendants, answer under oath (the oath not having been waived in the bill), denying the charges of fraud, and McIntire insisting he had settled honestly with the plaintiff.

This bill and that in the Brown case were filed the same day, and resemble each other closely in their formal parts and in many of the charges. After McIntire had answered an amendment was made making Martha McIntire a party defendant and containing similar interrogatories, which the defendants were called on to answer, without oath, principally as to the existence of Emma Taylor, to which the McIntires answered.

This bill was filed 7th of February, 1891, eight years and
901 eleven months after the sale and conveyance sought to be cancelled. Her deed had then been on record since April, 1882. The complainant testified she had a dispute with complainant, complaining of the smallness of the price at the time of the sale; that he then explained the matter, but that she had on the same grounds complained to McIntire ever since whenever she would meet him. She admits she had testified in another case, about the time of the sale, that she had received $175 on the purchase; that there were taxes to a considerable amount standing against the property at the time, which were deducted from the $300; that she has lived in Washington, employed as a clerk, ever since; that she was anxious to sell the property at the time it was

sold, as she then needed money, and there was some trouble about the title.

The only explanation in the bill of the delay in bringing suit is contained in the 6th paragraph in these words, "On information and belief, only recently obtained, complainant avers and charges that the name of Emma Taylor was adopted for fraudulent purposes," &c.

There can be no controversy that this bill contains no adequate disclosure of the time and manner in which she acquired the alleged information, and that it fails to furnish any explanation why it could not have been obtained sooner. The amended bill in this and the Brown case, averring the complainants in each case had learned of the two unrecorded deeds only upon the filing of McIntire's answer to the originals of these bills, do not remove this objection, as the bills were not filed to set aside those deeds, and they are only referred to in McIntire's answer as evidence to meet the main charges in the original bill.

If the exacting requirements of a successful reply to the objection of laches as expounded in the cases I have quoted are ever to apply, it would be in such a case as this.

In the Southey bill the plaintiffs claim as heirs-at-law of
902 Cornelius Cohan; and aver that E. A. McIntire, claiming to act under a trust deed from Streb and wife (recorded in 1872), conveyed to one Swartzell, in 1876, the lot described, in pursuance of a pretended sale made for an alleged default in payment of notes secured by the deed; "that complainants have only recently discovered that the said pretended sale was a deliberate fraud perpetrated by said McIntire on complainants' father, of which he was wholly ignorant during his lifetime, the facts and circumstances of said fraud, which have only within the past ten days been discovered, being set forth in the succeeding paragraphs of the bill." The bill then avers on information and belief that at the time of the sale the whole indebtedness secured by the deed had been paid, or, if nor entirely paid off, that McIntire held the unpaid notes, and was therefore disqualified as trustee to sell for their default; that Swartzell was a fictitious purchaser, used by McIntire to cloak his own fraud and allow him to purchase at his own sale, and that McIntire took possession at once of the property and has held it ever since; that in May, 1882, Swartzell, in ignorance of the fraud, conveyed the property to one Emma Taylor (a fictitious person), without consideration; that in May, 1884, McIntire fraudulently caused a deed to be executed, purported to be signed by Taylor, conveying the property to Martha McIntire, and that said deed was without consideration, and that all said deeds, if not void for other reasons, are void because there is no such person as Emma Taylor. This bill also required answers from the defendants, the McIntires, without waiver of oath.

The defendants answered on oath denying all the charges of fraud made in the bill.

The alleged fraudulent conveyance to Swartzell was executed in December, 1876. This bill was filed in March, 1891, fourteen years

and three months afterwards. That it contains no sufficient statement of the time and manner of the discovery of the alleged
903 fraud and no explanation or excuse why the discovery was not made sooner is apparent; and in view of the numerous conveyances offered by both parties and of all the other facts imputing notice to those entitled to complain of any fraud in the sales, it seems impossible to believe the parties at that time thought they had any just grounds for complaint. The testimony of John Southey, the owner of the property at the time of the sale, who is the husband of one of the complainants and brother-in-law of the others, that immediately after the sale he complained to McIntire that he had no right to sell, and that he had frequently done so since that time, and would have filed a bill then for an injunction if he had been in funds, is conclusive of the question.

The last bill of the series is that brought by Laura Haynes and her husband against Edwin A. McIntire alone.

It charges that being residents of South Carolina, on the 7th of September, 1881, they conveyed to defendant E. A. McIntire lot 31, in square 388, in this city, to secure the payment of a promissory note for $650 made to one Galliher, defendant being then their agent to collect the rents of the property; that in August, 1882, the defendant pretended to sell and convey the property to Emma Taylor for $500; that in May, 1883, a deed was recorded from Taylor to Alfred Brown, conveying the property for $1,100 in cash and deferred notes, all of which have been paid to defendant and appropriated by him to his own use. In paragraph 7 the bill says "that complainants have only recently discovered that the said pretended sale and deed to Taylor was a fraud perpetrated by McIntire upon complainants, who, being absent from Washington city, had no means of heretofore discovering said frauds;" "that there has never been such a person as Emma Taylor, and she was an invention of defendant to assist him in his fraud," the bill concluding with a prayer that defendant may answer the interrogatories therein, and that defendant may be required to account, &c.

904 An amendment to the bill filed in July, 1891, avers there was no public sale; but nothing is said as to when this information came to complainants' notice.

The defendant answers the interrogatories on oath, denying all charges of fraud or impropriety in the matter.

The sale took place and the deed bears date in August, 1882, and the bill was not filed until May 12, 1891, eight years and nine months afterwards. The correspondence given in evidence between the parties before and after the sale, with the records of the deeds, certainly indicate that the exercise of proper diligence on the part of the complainants would have enabled them to institute this suit with greater justice to themselves, as well as to the defendant, at least eight years ago, and their failure to make any move in this direction during all this time under the circumstances, without any plausible excuse for their delay, must be considered such culpable laches as disentitles them to be heard in a court of equity.

There have been cases where, upon proper averment of the recent

discovery of hitherto unknown facts, with satisfactory explanation of the reason why such discovery had been so long delayed, courts of equity have listened to appeals for relief after longer delays than are here shown; but those were cases where the evidence rested upon incontestible records or where from other considerations the dangers which are almost inseparable from long delays did not menace the just rights of defendants. To lend too willing an ear to attempt to break up settlements long since considered final upon vague charges of fraud to be supported only upon the precarious testimony of ignorant witnesses whose memory must naturally become weakened by the lapse of time would be to encourage a general attack upon the possessions of the community. At the least, the claimants who seek this extraordinary intervention should observe in the presentation of their case the rules so imperatively asserted by repeated decisions of the highest courts, which have also declared that they will hold such claimants to the stringent rules of pleading and evidence.

905 One prominent ground upon which the courts base their refusal to listen to such tardy complaints is the danger that the lapse of time may have made "some change in the condition or relation of the property or the parties."

(145 U. S., 373, Galliher *vs.* Cadwell.)

That such changes have occurred in the condition of the different properties involved in these causes is apparent.

Between 1876 and the present time there has been a marked increase in the values of landed property in Washington: and increase in the values is a circumstance greatly relied on by the courts when they are approached by claimants shown to have acquiesced in the occupation of property by others who during the intervening time have been regularly paying the taxes and other charges on the property without remonstrance by those now claiming title, and presenting their claims only after such great increase in value has appeared, and after the occupants have expended money in improvements still further increasing its value.

(148 U. S., 370, Johnson *vs.* Standard Mining Co.)

These conditions appear with respect to each of the properties, to a greater or less degree.

The present owner of the Hayne property is Alfred Brown, who purchased in good faith, paid the purchase-money, and has been in possession ever since under a deed from Emma Taylor. This his muniment of title is now denounced, after having been on record for more than eleven years, as conveying to the grantee no title whatever. A prompt complaint by the owners of the alleged misconduct of McIntire would at least have intercepted the payment of the numerous deferred payments by Brown (who is also a man of color) if it would not have resulted in clearly showing either that those charges were incorrect or in establishing them while the witnesses were alive and the facts fresh in their memory. In the same predicament Joseph Forrest may be compelled to stand as another of

the grantees of Emma Taylor, for his title must depend upon
906 hers; and such may be the painful situation of all other holders of property who claim through her.

10 Wheaton, 152, Elendorf *vs.* Taylor.

2 Sch. & Lef., 636, Hovenden *vs.* Lord Annesly.

In speaking of changes in the condition of the parties the Supreme Court specially refers to the chances of the death of witnesses during such protracted delays in these words: "As the lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and the other means of judicial proof."

(99 U. S., Golden *vs.* Kimmell.)

Death has been quite as busy as usual with the actors and witnesses in these transactions. Of the principals, Thomas Pryor and Barbara Brown and one of the McIntires have died. Of witnesses, William Helmick, the justice; Caldwell, the auctioneer; John E. Kendall, Fred. W. Jones, and Cathcart Taylor have died. Every one of these witnesses, it is insisted by the defendants, would have given important testimony in their favor. How they might have testified I cannot determine, but certainly most of them had the qualifications to give valuable evidence as to many of the matters in controversy—Helmick more particularly as to the signatures and the execution of the deeds; the auctioneer as to the writings claimed to have been made by him and to the sales. With respect to the latter, Kendall would also have been a witness, and perhaps all of them with respect to the existence or identity of Emma Taylor. The effect of the lapse of time on the "memory of witnesses" is well illustrated in the contradictory testimony of Peugh, who, it is stated, has died since he testified last in the case. The liability to the disappearance of papers with the efflux of time is another important consideration, and an instance of this is shown in the destruction by Caldwell's widow of his important record of auction sales.

Another difficulty that is frequently developed or increased by lapse of time is the impossibility of giving complete or proper relief where the courts are inclined to interfere, or, as it is usually expressed, to do full justice to the parties that the court may rectify the wrong (as the Supreme Court expresses it) "with a feel-
907 ing of certainty that they are not committing another and perhaps greater mistake."

(7 Gill, 363, Clabaugh *vs.* Byers.)

The hardship of ejecting such a purchaser as Alfred Brown has been adverted to; but perhaps a greater trouble would arise if the readjustment prayed for of the claims of the *cestuis qui trusts.*, who have received their money and gone their way, should be attempted, and an accounting directed concerning the rents received or recoverable in the interim, and an accom-odation of the countercharges for taxes, betterments, or improvements that would be claimed if any such proceedings were to be attempted after such a lapse of time and the disappearance of witnesses, past and prospective.

As the courts have declared that in suits of this description they will not relax the rules of pleading and evidence, it is proper to notice that even if the complainants were otherwise free from objections and *there* averments were established against the other parties no decree could be granted against Emma Taylor, as no decree *pro confesso* after publication was obtained against her.

I think it proper to add that I am not to be understood as expressing any opinion as to the charges or defenses presented by the opposing parties upon the facts, as the right to pass upon these rival contentions is denied me, under the circumstances, under the controlling decisions of the highest courts.

For these reasons I shall sign a decree in each case dismissing the bill.

A. B. HAGNER.

908 *Memoranda.*

1894, Dec. 31.—Motion for rehearing filed.
1895, Jan. 7.—Petition for rehearing filed.
1895, Jan. 8.—Rehearing on question of laches allowed.

Decree Dismissing Bill and Amended Bills.

Filed March 4, 1895.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 12761.

This cause came on to be heard upon the bill, amended bill, answers, exhibits, testimony, and all other the proceedings, and, being submitted to the court, after argument by counsel for the respective parties and after the re-argument of the same, were by the court read and considered.

It is thereupon, this 4th day of March, 1895, by the court and the authority thereof adjudged, ordered, and decreed that the said bill and amended bill be, and the same are hereby, dismissed with costs, for which execution shall issue as at law.

A. B. HAGNER,
Associate Justice.

From the above decree the complainants take an appeal in open court, which is allowed.

A. B. HAGNER.

March 4, '95.

909 *Opinion of Justice Hagner upon Re-argument.*

Filed March 4, 1895.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 12761, Docket 31.

ELIZABETH BROWN
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 12977, Docket 31.

ANNIE M. ACKERMAN
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 12978, Docket 31.

CATHERINE SOUTHEY *et al.*
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 13034, Docket 32.

LAURA HAYNE
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 13177, Docket 32.

During the course of the argument of these causes the defendants' counsel asked leave to file an amended answer or pleas presenting specially the question of laches. The court declined to allow this course to be taken, upon the ground, expressly so declared at the time, that no such pleading was necessary, as the court, *mero motu*, could notice that defense.

At the close of the whole argument the court, for the special purpose of calling their attention to the question of laches, asked the counsel what they had to say upon that subject. The defendants' counsel reminded the court of his application and of the grounds upon which it had been overruled, while the complainants'
910 counsel insisted the defense was not applicable because of the recent discovery of some of the deeds offered in evidence. The justice then informed counsel he desired to receive any further arguments they might wish to submit on briefs. Each side accordingly filed supplemental arguments, consisting chiefly of comments on the testimony, but those of the defendants referred at some length to the question of laches, while the complainants' counsel confined themselves almost entirely to a discussion of the testimony.

As my examination of the cases progressed I became convinced the question of laches should be the controlling ground for my decision, and the opinion was framed accordingly.

For reasons I believed should be absolutely controlling with me, I purposely refrained from the expression in the opinion of my convictions as to the facts, except so far as they bore upon the question

of laches, believing it was my duty to decide it as I did, upon that question alone.

After the delivery of the judgment the complainants' counsel expressed their desire for a rehearing upon the question of laches, and at my suggestion filed an application, which was promptly granted. As the order was altogether within the discretion of the court, it was confined to the question of laches; and being convinced an argument on notes would be more satisfactory and instructive, it was accordingly ordered.

If it had been intimated at the time that an oral argument was considered preferable, there would probably have been no difficulty in complying with the intimation, as had been the case with respect to every request or suggestion on the part of complainants' counsel in the whole conduct of the cases. The intimation that, as a general rule, a re-argument is made *ore tenus* is incorrect. It is a matter to be regulated by the court in its discretion, and in my experience re-arguments have usually been presented on notes.

The time limited for the filing of the new argument ac-
911 corded with that suggested by complainants' counsel, and it was afterwards extended on their request. The extent and thoroughness of the new volume submitted to the court is not evincive of a lack of time for examination or preparation.

No lawyer can deny the existence of the irrefragable rules of equity that there must be conscience, good faith, and reasonable diligence to call into action the powers of the court, and that where these are wanting the court does nothing; that it has been a recognized doctrine of courts of equity, from the very beginning of their jurisdiction, to withhold relief from those who have delayed for an unreasonable length of time in the assertion of their claims; that where unreasonable delay appears the party suing must specifically set forth the impediments to an earlier prosecution, and that the excuses presented must be satisfactory to the court.

Wherever the court becomes convinced from examination of the pleadings and evidence of the existence of what may properly be called laches, unexplained to its satisfaction, these rules should apply as absolutely as the statute of limitations applies at law, and equally, without respect to any alleged hardship of the case. If in an action at law on a promissory note the defendant pleads the bar of that statute and the defense is not impaired by the setting up of a new promise, the court does not pause to listen to testimony to show that the defendant had behaved ungratefully about the transaction or that he bore a bad character. So, if in a suit upon a verbal promise to pay the debt of another the defendant relies upon the provision of the statute of frauds invalidating such a promise, it would be useless for the plaintiff to attempt to show the defendant had pledged his honor to pay the debt or that the plaintiff had been greatly injured by his bad faith. The court would promptly sustain the defense in each case, because the principles of the law imperatively require the defense should be sustained.

912 Why should not the same principle hold in the application of the equity rule respecting laches?

The court examines the facts to ascertain, 1st, whether there had been culpable delay in bringing the suit, and, 2nd, whether a satisfactory explanation and excuse for such delay appears in the case before it, since each case must stand upon its own circumstances; and where it has arrived at the conviction that such unexplained laches does appear, then, in the language of the Supreme Court in Hammond *v.* Hopkins, the defense of laches "imposes an insuperable bar to contention upon the subject." There is no longer room for disputation as to the weight of this or that fact or the comparative value of the testimony of different witnesses, and the reiterated denunciation of the opposing witnesses and the most positive assertions of the personal beliefs of counsel as to the excellence of their own witnesses and the bad character of those who differ from them must be equally ineffectual to raise such a contention.

Whether the witness- called by the parties to testify as to the case at large are good or bad cannot affect the decision as to the unexplained laches after the court has decided they are present in the case.

After such a decision, to enter upon a particular examination of the truth of the averments of fraud set forth by one party and denied by the other would be but waste of time.

It seems to be evincive of a distrust by the court of the existence and strength of the rule and almost an apology for its existence. As though he were to be moved by objurgations against the witnesses of the defendants and the appeals to a court of conscience to avenge the frauds whose existence has been alleged, the judge is besought to travel through the record for no purpose unless it be to apologize for enforcing an unquestionable rule of the equity law. If the court has decided that a case of unexplained laches is presented, its plain duty is to dismiss the bill and to hesitate to
913 perform that duty would be inexcusable neglect of its own ancient and well-founded principles. In accordance with this idea is the practice, frequently pursued of late years, to prevent the delay and expense of testimony that would be of no avail by deciding the question of laches upon demurrer to the bill, as was done in Lansdale *v.* Smith, 106 U. S., 394, and has been followed in numerous cases, though doubtless against the earnest arguments of counsel for the complainants in those cases.

To pursue a contrary course would be worse than useless in its influence. It would unquestionably be in opposition to that other principle, that it is the interest of the Republic that litigation of this character should be discouraged rather than stimulated; and if this wholesale doctrine is to be recognized anywhere it should pre-eminently be applied in this jurisdiction, where irregularities in real-estate proceedings were frequent in remote times and where the disposition to bring speculative suits is unfortunately too common.

If those contemplating the institution of suits involving the opening and re-examination of ancient settlements should come to appreciate that the first effort *to* the courts will be to ascertain, from a careful examination of the case, whether an unreasonable and

unexplained delay is manifest, and that when a positive determination to that effect has been arrived at it "imposes an insuperable bar to further contention in the case," there would be more hesitation in hazarding such enormous costs as the plaintiffs' brief on the re-argument informs us have already been incurred on the part of these impoverished plaintiffs.

Whereas if it is to be understood, on the other hand, that, although the court shall have arrived at such a determination, the chance still exists that under the influence of an abler presentation of the plaintiffs' claims and of the vehement denunciation of the defendants' conduct the court, through pity and indignation, may be induced to withhold the application of those settled rules,
914 then hopes are held out that will soon bear evil fruit.

After the Supreme Court had declared its conviction that inexcusable laches appeared in Hammond *v.* Hopkins, which disentitled the complainants to recover, would they have listened to an argument, however earnest, to prove the facts could be shown to be so atrocious that a chancery court ought not to tolerate the escape of the perpetrators with their ill-gotten spoils, and that chancellors who love justice should not allow iniquity to succeed, despite of the technical rules? That court answered such a question in the negative when it declared that the defense of laches "interposed an insuperable bar to contention on the subject."

The complainants' counsel in the re-argument contest the correctness of the court's decision as to the question of laches and support their contention by criticisms upon the cases cited in the opinion, which they insist are not applicable or have been misconstrued by the court, and also by the citation of a number of cases not referred to in the opinion.

With respect to the first class of cases, the court has re-examined them in the light of those criticisms and sees no reason to change its views as to their applicability or authority.

One assertion made by the counsel with great positiveness, and repeated more than once in the re-argument, is that no cases can be found in which the courts of equity have ever sustained the defense of laches (where the controversy related to real estate) unless the delay after the discovery of the fraud has been more than twenty years. Again, the counsel confidently assert that the reports of the Supreme Court will be searched in vain for a contrary doctrine, and that "no case can be found in those reports in which the bill was dismissed on the ground of laches where actual fraud was charged against a trustee of real estate and if the bill was filed within twenty years after discovery of the fraud."

And in discussing the case of Hammond *v.* Hopkins they again assert that "the delay to complain was over twenty years
915 when the statutory bar was completed."

The counsel have assembled unnecessary conditions in the presentation of their propositions; but, taking them all as requisite to an accurate definition, I think it would not be difficult to find many cases (not one alone) where the courts have dismissed such bills upon the ground of laches which were filed within less than

twenty years. In Hammond *v.* Hopkins the sale by the trustee took place on the 10th of May, 1864, and the bill was filed April 8th, 1884, one month less than the twenty years, and therefore inside of the legal term when a right of entry would be barred at law. That bill also prayed for a decree involving the setting aside of deeds made and recorded still subsequent to the time of the sale, settlements in the orphans' court in 1865, and sales running down to December, 1875, and decrees passed in 1877, and the bill alleged and the witnesses swore that many most important facts connected with the sale were not discovered by complainants until February, 1884.

In Harwood *v.* R. R. Co., 17 Wallace, 78, the bill was filed in December, 1865, to vacate a decree passed in 1860 for the foreclosure of a mortgage upon all the property of the railroad, alleging ignorance of the fraud charged until 1865 and explaining the reason why such ignorance existed. On demurrer, the court below dismissed the bill, and this action was affirmed by the Supreme Court upon the express ground that the delay of five years in instituting the suit was too great, and that no sufficient excuse was given for it in the bill. The counsel are in error in asserting the bill was not dismissed because of laches. The language of the report is directly to the contrary, as is noticed in 145 U. S., 372, Galliher *v.* Cadwell, although the delay was only for five years.

It is true the Supreme Court pointed out the serious defect in the proceedings in the neglect to introduce as a party the person who had made the sale sought to be vacated, just as this court in its opinion in the present case remarked upon the failure by the plaintiff to procure an order of publication and a decree *pro confesso* against Emma Taylor, a grantor and grantee, who was sued
916 as a non-resident. The complainants in the re-argument seem to consider this an entirely unimportant omission, inasmuch as they are satisfied no such person exists; but whether Emma Taylor's appearance was obtainable was a fact to be ascertained according to the rules of equity practice, which require a publication, and it is not sufficient that the complainants now inform the court such a proceeding would have been fruitless. The other side has the same right to its opinion, and it denies this contention of the complainants. We have seen (in 7 Howard, 829, Stearns *v.* Page), the Supreme Court said, "they will hold the complainants to stringent rules of pleading and evidence and require him to make out a clear case," and the assertion of counsel that the omission is unimportant cannot change the rules of the court.

The court could not co-cede, except because of a stolid purpose to disbelieve every witness on the part of the defendants, that the non-existence of Emma Taylor is so conclusively established by the testimony that the complainants' assumption of there being no such person is justifiable. Eight witnesses testify to seeing her about McIntire's office, as large a number probably as either complainant adduced to support any assertion on that side; and such a concession would be singularly at variance with the admission of counsel, in the first brief, at page 7, in these words: "Again, while he puts

upon the stand persons who saw her (Emma Taylor) prior to 1880, which, of course, was easy enough to do, since there seems no doubt that at that time a young woman by the name of Taylor, whether for the purpose of flirting or otherwise, made occasional calls upon him at his office (for they were so intimate together that the clerks used to joke about it and say he was going to marry her, &c.)," and with that was probably a more explicit admission to the same effect in his oral argument. It is not easy to understand how the court is to conclude under such circumstances that a person who
917 was so distinctly in evidence in 1880 must now be assumed beyond all possible doubt to be a mere myth, and never to have existed after 1880, or indeed at any other time, as is now contended. Our country is very extensive and the world is still larger, and there is no more reason shown why Emma Taylor's present whereabouts should be known to the persons concerned in this suit than their present whereabouts should be known to her.

The court of appeals in the recent case of Walter and Mackey, trustees, *v.* Slater enforced this principle by refusing to recognize the authority of trustees in their own names to institute suits (which were characterized by that court as apparently vexatious) in behalf of numbers of claimants, notwithstanding such form of prosecution would have been highly convenient and economical to the plaintiffs concerned.

Besides the cases cited by the court in its opinion, it may be proper to refer to some others in opposition to this contention in the re-argument. In Godden *v.* Kimmel, 99 U. S., 201, a deed had been executed in October, 1857, conveying real and personal estate to a trustee, which, in February, 1871, was attacked as fraudulent by the creditors of the grantors. The Supreme Court dismissed the bill because of the delay of less than fourteen years, unaccompanied by any satisfactory explanation of the laches.

And in Richards *v.* Mackall, 124 U. S., p. 186, the opinion says: "The present suit was brought by Brooke Mackall, Jr., on the 11th of April, 1882, nearly twelve years after Richards' purchase, for the purpose of having the sale of June 13, 1870, the conveyance of October 17, 1870, and all transfers depending thereon adjudged to be void and of no effect." The court in its opinion, on page 188, after stating the general principles applicable to the subject, says: "These principles, applied to the present case, lead to a reversal upon
918 the ground that the appellant, upon his own showing, has been guilty of gross laches in applying for relief." And in the concluding sentences it says: "In our judgment, he is not in a position to claim the interference of a court of equity. For that reason alone the judgment must be reversed and the cause remanded, with directions to dismiss the bill." The Supreme Court there declined to enter upon an examination of the facts, except so far as they bore upon the question of laches (precisely as this court did in the case at bar), not having been taught by the counsel that they had no right to adopt such a course.

It is very evident the counsel have not exhibited their usual

accuracy in their assertion of the alleged principle I have been examining.

The complainants' counsel in the re-argument have referred to a large number of cases, thirty or forty in number, not cited in the opinion of the court, for the purpose of showing the court's view of the question of laches is not supported by the authorities, and have quoted quite extensively from the opinion in several of those cases. This number might have been increased almost indefinitely, for the decisions on this interesting point are almost unlimited. But interesting and instructive as are the extracts, it is well settled that each case must be decided upon its own facts and circumstances, and hence a court can no more with safety rely upon the conclusions of other tribunals in such cases than upon the positive contentions of the counsel on one side or the other of the pending case. Most of these cases are quite familiar to the court. A considerable number of them were referred to in Hammond *v.* Hopkins, and, so far as they are inconsistent with that case, may be regarded as overruled for the present inquiry. The Supreme Court in the latter case commented particularly upon Michou *v.* Girot, 4 Howard, from which counsel have quoted liberally in their brief, and the
919 opinion of Chief Justice Fuller sustaining the defense of laches disregards the utterances in the former case. The question before me is not a new one, and it is not now engaging my attention for the first time. As counsel and while sitting as judge in some of the cases cited, I have had repeated opportunities to weigh the force of most of the citations, and I conceive that nothing in the presentation of them by the counsel in their argument can effect the force of the rulings in the later decisions of the Supreme Court. If any of the cases cited are inconsistent with those later decisions they are to be regarded as overruled.

The counsel preface their presentation of this large number of cases by the statement that all they may say with reference to them in the re-argument is advanced upon the assumption that they have fully proved the frauds alleged, and that if the court, after the presentation of the facts disclosed by the evidence, is not convinced "that such is the case, then the discussion of the question of laches by them will be useless, since every argument they shall make will be based upon that assumption;" and they further "concede, if they have not proved the charges of fraud in all their enormity, the bills should be dismissed without ceremony." In view of these statements, more than once repeated, and of the request of the counsel for the defendants in his brief on this re-argument, I think it proper the court should so far depart from its original purpose not to express an opinion upon the facts in this case (except so far as they bear upon the question of laches) as to state that if my original purpose, before determining to confine the opinion to the question of laches alone, had been adhered to, I had intended in expressing my views as to the sufficiency of the proof to insert in the opinion these words of the Chief Justice, from page 272 of 143 U. S., Hammond *v.* Hopkins: "I think the complainants failed to make out their

charges of fraud, and that, apart from that, the evidence of laches imposed an insuperable bar to contention upon this subject."

920 In examining the charges of fraud, so frequently reiterated in these bills, the court was bound to apply to their consideration the cardinal rules of evidence applicable to the subject, and no argument can cause the court to lose sight of those rules where charges of fraud are under examination. The general term, in 2 Mackey, 563, Clark *v.* Krouse, adopts the principles of innumerable cases on the subject; that the law does not presume fraud; that it must be established by evidence; that the difficulty of establishing the fraudulent intention furnishes no justification for the judge to presume a fraudulent intent from his own vague suspicions of the nature and character of the transaction; that where the attempt is made to set aside deeds as fraudulent the principle prevails that they are *prima facie* evidence of the verity of their contents, and where they are supported by the positive answer of the defendants the testimony to set them aside ought to be so clear and explicit as to leave scarce a doubt on the subject.

2 Maryland, 375, Farringer *v.* Ramsay.
19 do., 176, Moore *v.* Blanheim.

In 6 Peters, 716, U. S. *v.* Arredondo, the Supreme Court approves the language of Justice Washington in Carrill *v.* Nicoll, 4 Peters, 295, and declares it will be governed by the rules laid down by the distinguished judge who delivered the opinion in that case as follows:

Says the court in 6 Peters: "He laid down three rules which were incontrovertable:

"1. That actual fraud is not to be presumed, but ought to be proved by the party who alleges it.

"2. If the motive and design of an act may be traced to an honest and legitimate source equally as to a corrupt one, the former ought to be preferred. This is but a corollary to the preceding principle.

"3. If the person against whom fraud is alleged should be proved to have been guilty of it in any number of instances, still, if

921 the particular act sought to be avoided be not shown to be tainted with fraud, it cannot be affected by those other frauds unless in some way or other it be connected with or form a part of them."

A further reason for caution in granting such relief exists in the present cases because of the character of the charges against the defendant Edwin A. McIntire.

Besides the allegations of breach of trust, embezzlement of the trust funds, and general unfaithfulness in the performance of his duties, he is especially charged with falsehood, perjury, and subornation of perjury, forgery, and the procurement of forgery, including one of the gravest offences known to the law—the forgery of deeds.

Even in a civil suit, where the fact to be proved involves moral delinquency, the evidence should be so strong as to exclude the pre-

sumption of innocence, for innocence is to be presumed until guilt is proved. 8 Maryland, 547, Corner *v.* Pendleton. In 2 Barn. & Ald., 386, Rex *v.* Twyning, where the legitimacy of a child depended upon the question whether the mother's first husband was dead at the time of her second marriage, the court said: "This is a case of conflicting presumptions, and the question is which is to prevail. The law presumes the continuance of life for seven years, but it also presumes against the commission of crime, and that, even in civil cases, until the contrary is proved. If the female had been indicted for big amy the evidence would clearly not be sufficient."

If vehement denunciation could supply the place of proof, the contention of the complainants might prevail; but the courts are charged with the duty of remaining uninfluenced by any consideration except the legal proof before them. In Hammond *v.* Hopkins, 143 U. S., 230, the court listened to an arraignment of the trustee whose conduct was denounced from the lips of our ablest counsel in words of wonderful power. The picture thus presented to the court was of a dying man committing
922 into the hands of his brother, his partner for years, the custody of his whole estate and the guardianship of his infant children, — of the brother completely disregarding these sacred duties; and, finally, under wholly unnecessary circumstances, as trustee, offering for sale a large landed property in this city, which has since become of enormous value, at the most *im*propitious period—while the civil war was flagrant—and at a time when it was said the roar of the hostile cannon might have been heard in this city above the voice of the auctioneer, returning as bidder for a small price a man of straw, who bought in the lots for the trustee, by whom they were conveyed to the purchaser ten days afterwards, and then reconveyed on the same day to the trustee himself; that the entire proceedings of the trustee constituted a fraudulently concocted scheme to cheat the children of his deceased brother; that in his capacity of executor and guardian he had passed fraudulent accounts, from time to time, during the minority of his wards; that he had by fraud procured the execution to himself by one of the sons after he had attained age (who was mentally enfeebled by drink) of a conveyance of his interest in his father's estate, to which, under the command and direction of the trustee, he had signed his wife's name, and that the trustee by means of fraud had obtained the certificate of acknowledgment of that deed by two justices of the peace. The bill, filed one month inside the twenty years after the sale, declared the plaintiffs had discovered many of the most important of these facts only within a few weeks preceding, and the circumstances under which they were discovered were set forth at length in the bill, which also averred the poverty of all their father's children, while their uncle "had dropped off gorged from a scheme which had left them flaccid and drain'd."

To all these fervid appeals the Supreme Court doubtless listened attentively, and then declared, after recapitulating the facts as they

found them actually established by the proof, that "the complainants had failed to make out their charge of fraud" (p. 272), notwithstanding the assurance of the plaintiffs' counsel that no man could doubt it was the most atrocious case that ever disgraced the records of a court of conscience, and notwithstanding the
923 court in general term had expressed the opinion that the purchase made by the trustee at his own sale was fraudulent and should be vacated in favor of the minor wards.

Without intending to depart from the grounds of my former decision, I think it proper to say I cannot understand how counsel could expect a decree in conformity with the prayer of *the* either of these several bills if they stood upon their own respective allegations and proofs alone, as in the Pryor case, for example, if the only matters presented for the consideration of the court were the pleadings and facts naturally connected with the sale and conveyance to Jenison in that particular case, and the same may be said of each of the other cases; but the counsel have, in the first place, insisted the court is justified in the examination of each of the five cases, and, before it shall have decided upon either case, to consider the existence of and the charges in the four other suits involving similar accusations, and that this aggregation of suits is to be regarded as a circumstance tending powerfully to establish the contentions in each case in turn. I do not believe the law is so unreasonable and unjust as to tolerate such a contention. It is true that in certain cases (where the question of *scienter* is of importance, as in indictments for passing counterfeit money), — is justifiable, in proof of the *scienter*, to show that the offender has been guilty of passing counterfeit money in other cases, but not merely that he had been accused or charged with passing such money.

This exception is probably allowed as a mode of proving the *scienter*, since an honest clergyman, having in his pockets the collections of the church for the previous Sunday, might innocently pass a counterfeit coin; and the principle has been extended to accusations of fraud in civil controversies where guilty knowledge or the motive of the act under examination is sought to be ascertained. And for this purpose fraudulent acts committed by the accused similar in appearance to that under examination may be shown in evidence to show such guilty knowledge.

924 But the principle of those cases cannot be extended so as to allow testimony to be given of other contemporaneous charges not yet established. Could it be possible that in the Howgate case, recently on trial in the criminal court, the district attorney, by way of proving the prisoner's guilt in the case on trial, could have been permitted to call attention to the fact that there were half a dozen indictments of similar charges pending against the prisoner? Even where there have been convictions in other cases the law is plain that neither of these convictions can be noticed at all, except under strict and particular limitations. In 6 Peters, 716, U. S. *vs.* Arrendondo (*supra*), the Supreme Court, as we have seen, adopts the opinion of Justice Washington in 4 Peters, 295. The judge was there speaking of a case where the person against whom fraud is

alleged has been proved to have been guilty of it in any number of instances, not simply charged with such other frauds; and he declares it is still required that the particular act sought to be avoided should be shown to be tainted with fraud before it can be affected by such other frauds already "proved," and then only, if in some way it be connected with or form a part of them. To the same effect is 23rd Howard, 172. The contention of the counsel would justify the court, in the trial of case number one of these five suits, to find that case was sufficiently proved by taking into account the fact that accusations in the same direction had been made (though not yet passed upon by the court) in the four other cases. In the same way case number two would be proved by referring to the accusations made in case number one and in the remaining cases; and so in turn each might be held to be established by these mere accusations, thus arguing in a vicious circle, which would admit accusations in other cases to stand as the equivalent of proof in the particular case. Such is not the law.

But the chief reliance of complainants' counsel to establish their contentions in these cases is built upon the alleged bad character of the McIntires and in their assumed perjuries and forgeries; and, invoking the doctrine of the Santissima Trinidad, they insist the court should decide against the truth of whatever either of those witnesses may have stated in the course of the examination, for unless those witnesses are discredited plainly the complainants could not sustain either case. That a large part of this incriminating testimony is obnoxious to the exceptions taken for irrelevancy, and because of its being mere hearsay and inadmissible upon other grounds, I am well satisfied; but I shall not undertake the enormous labor of examining the exceptions here, nor shall I pass upon the counter-charge of defendants as to the motive of these suits and their promotors.

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So far as the effort to impeach the testimony of those witnesses depends upon the alleged proof of crime, it is hardly necessary to say such evidence is never receivable. Lord Holt said a great many years ago, in 4 St. Trials, "Look, ye! you may bring witnesses to give an account of the general tenor of this witness' conversation, but you do not think, sure, that we will try at this time whether he be guilty of robbery."

With respect to the attempt to impeach their testimony, it is observable that no witness is brought from the large population of this District to testify that either is unworthy of belief and that they would not credit them on their oath, although this is the most usual and perhaps the fairest way of impeaching a witness. Of course, there exists the practice to impeach the witness by contradicting his statements and showing that what he testified was at variance with what other witnesses had said on the same subject; but it remains that what those other witnesses said is also at variance with what the McIntires have testified; and there must be something shown as to the character for veracity ascribed to the opposing witnesses and to the nature of the contradictions themselves to compel the court always to believe the one party and dis-

believe the other, for witnesses testifying to transactions as remote as these may very naturally make misstatements without deserving unmeasured denunciation as perjurers. The tables might
926 have been turned against witnesses on the other side. Mary Pryor signed and swore to the original bill in this case, in which, among other things, after stating she had conferred with Jenison, her codefendant, she swears he informed her he did not know the property had been sold under the trust or conveyed to him or that it stood in his name, and that he had received no consideration whatever for the execution of the deed to Emma Taylor. It cannot be contended this statement, sworn to and signed by Mary Pryor, was true. It is proved in the case beyond all question and admitted by Jenison that he had given written directions to McIntire to sell the land; that he knew of the execution of the deed to himself, and that he and his wife had executed a deed of trust of the same property about the same time. A similar flood of invective directed against the complainant Pryor would represent her as having come into the temple of justice with a lie in her mouth, and that these false charges were attempted to be supported, with all their many inconsistencies and improbabilities, by testimony equally unreliable.

The case set forth in the Pryor bill seems so wholly improbable that it is difficult to suppose its prosecution would have been persevered in, except for the supposed aid of the other cases and the furious and unceasing denunciation of the McIntires upon every point. For years before Edwin McIntire became connected with the property and while under the management of Brainard H. Warner it had been conveyed to Henry McIntire as trustee. This colored woman and her husband had fallen into arrears and had been unable to keep up the interest on the debt of $500 then due on the lot. Their affairs had become so hopeless that they had signed a deed conveying the whole property to Henry McIntire's sister for a nominal consideration, but the grantee, unwilling to shoulder the debt with the taxes and charges that had been incurred, refused to claim under the deed. Upon the direct written order of Jenison to Edwin A. McIntire a sale took place. Mary Pryor says that in accordance with a previous agreement with McIntire the lot
927 was struck off to her husband for $700, for her use, by the auctioneer.

There is no pretense that either of the Pryors had received any money in the meantime to enable them to pay any part of this large sum, although they had been unable to keep down the interest on the smaller debt, or that either of them ever signed a note or any scrap of paper evidencing the alleged sale, or that either ever paid a cent on the alleged purchase, or that they had at the time money enough to defray the costs of the advertisement or to pay commissions of the trustees. McIntire was under no necessity to make so stupid an arrangement. No possible reason is assigned why Edwin McIntire, after having received the positive instructions of Jenison to sell, should have been willing to run the risk of so absurd and abortive a sale as the complainant pretends took

place, for since the District was formed no sale was ever made marked with such absurdity or with such a total absence of anything to establish its probability. Pryor and his wife remained in possession of the lot for some years, paying rent to McIntire at the rate of $6 a month, which she said was to go on the principal, under the agreement, in case they should be able to pay off the purchase-money. In the meantime interest on the $700, with the taxes and repairs, should almost have equalled the rent, and (according to her story) not less than twenty years would have elapsed before they could have paid the debt under this alleged arrangement even if they had been prompt and had acquired the ability to pay. To believe that so unnecessary and preposterous a bargain was actually made involves too serious a stretch of human credulity. Finally, at the end of a few years, without an expression of dissatisfaction or remonstrance by husband or wife, they surrendered the key to McIntire, left the premises, and moved to a house near at hand, where she still lives and in silence saw houses built upon the lot, and during all this interval no word of complaint was heard from them,
928 unless we are to believe her testimony that soon after the sale, at a time when she had nothing on earth to complain of (according to her own statement), she met Mr. McIntire in Judiciary square and expressed some unexplained dissatisfaction with his proceedings. Her dissatisfaction could not have been with the result of the sale, for her present contention is that she then thought the lot had been struck off to her husband; nor with the amount of the purchase-money, for the contention is that it was worth more than $800; or with the terms of payment, for they were lenient beyond all precedent; but even if her story in this particular be true, it shows she had knowledge of something wrong ten years before she brought this suit. Her charge as to the purchase by Pryor is attempted to be supported by the testimony of witnesses who profess to remember hearing the announcement of Pryor as purchaser, one at least of them from a position where they could scarcely have heard the bidding.

Among the witnesses who remember that so many years ago they heard the proclamation of a purchaser who had not a cent in the world to pay for what he bought are some negro girls, who were children of 7 or 9 years of age at the time of the sale. The common experience of individuals is to be applied in judging of the value of such statements, and to me it seems most improbable, supposing any negro girls of such ages had been present at a sale of land within the last month, that one in a dozen of them could be found today to tell what the sale was about or to give a reliable account of anything that did occur. That grown persons, after such a lapse of time, would remember the details or particulars of a transaction in which they had no particular interest is most improbable. If it were certified to me that since the first argument of this case a valuable property had been set up at public sale and knocked off to a purchaser, and that a person living three doors off, accustomed from time to time, though not regularly, to read as most persons do

the advertisements of sales in the newspapers, had known
929 nothing whatever of the sale until months after it had taken place I should be prepared to give it credence, since it would correspond with personal experience. How vehemently one possessed of only a part of the remarkable redundancy of invective of the counsel for the complainants could denounce the utter unreliability of Mary Pryor and her whole case can readily be imagined, and how naturally on the conclusion of such a tirade (adopting the idea of counsel) she might have been stigmatized as "*menteuse à triple étage.*"

If Jenison, an intelligent clerk in a public office, could vary his statements as he has done, doubtless because of this lapse of time, this old *old* negro woman might well have erred, partly from the same cause. She probably did only what is so frequently done in this city by uneducated people. If either they or their ancestors ever happened to own any land here which had been sold long ago they are very easily convinced the transfer had been obtained by fraud, and that they ought to recover the lands enhanced in value and with intervening rents. Charity would prefer to ascribe the statements of this old woman rather to the lapse of time and the want of businesslike knowledge on her part then to corrupt motives. In these remarks I have been considering the testimony of the complainants alone, without noticing that for the defendants (all of whom except the three McIntires are disinterested witnesses) which contradicts every incriminating charge of Mary Pryor and the other complainants and their witnesses.

The case of Ackerman is of the same character. Can anybody believe Mrs. Ackerman's statement in her bill that she received only $75 from the sale of the small lot placed in McIntire's hands when it was proved clearly that about the time of the sale she had sworn in another case (where her interests seem to have been to minimize rather than exaggerate the amount obtained
930 & 930½ from the sale) that after reckoning costs, taxes, &c., she received $175? Neither of these cases could possibly stand alone, striking out the attack on the McIntires and the fact that there were five such accusations pending; and yet if Pryor's story is unreliable, and it be true that McIntire sold the lot to Jenison and conveyed it to him after a fair sale, that transaction was the end of all title of the Pryors, and what became of the land afterwards was a matter of no legal consequence to Mary Pryor.

Seeing no reason for changing the opinion I formerly expressed in these causes, I conclude in the language of the Supreme Court in Richards *v.* Mackall, 124 U. S., 188, which, after expressing its judgment that the complainant was not in a position to claim the interference of a court of equity because of his unexplained laches, declares "for that reason alone the judgment must be reversed and the cause remanded with directions to dismiss the bill."

I shall sign decrees dismissing each of these five bills with costs.

A. B. HAGNER,
Asso. Justice.

March 4, 1895.

* * * * * * *

931–933 In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. McINTIRE, MARTHA McINTIRE, and HARTWELL JENISON. } No. 12761. In Equity.

The President of the United States to Edwin A. McIntire, Martha McIntire, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 4th day of March, 1895, wherein Mary C. Pryor is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 8 day of March, 1895.

S. S. HENKLE,
Attorney for Appellees.

* * * * * * *

934 In the Court of Appeals of the District of Columbia, May 15th, 1895.

MARY PRYOR, Appellant,
vs.
E. A. McINTIRE *et al.*, Appellees. } No. 465.

S. S. Henkle, sol. for appellees:

Take notice that the appellant hereby designates the following portions of the transcript of the record in the above case to be printed as necessary to the hearing of the cause, to wit:

All of the transcript except so much thereof as is included in red-pencil brackets in said transcript.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
WM. W. BOARMAN,
Sol's for App'l't.

(Endorsed:) Court of Appeals, D. C., April term, 1895. No. 465. Mary C. Pryor, appellant, *vs.* Edwin A. McIntire *et al.* Designation by appellant of parts of record to be printed. Court of Appeals, District of Columbia. Filed May 15, 1895. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 465. Mary C. Pryor, appellant, *vs.* Edwin A. McIntire, Martha McIntire. Court of Appeals, District of Columbia. Filed May 14, 1895. Robert Willett, clerk.

501 In the Court of Appeals of the District of Columbia.

MARY C. PRYOR, Appellant,
vs.
E. A. MCINTIRE *et al.*, Appellees. } No. 465.

To the honorable justice- of said court:

The petition of Mary C. Pryor respectfully represents that in the transcript of the record now on file in this court a number of deeds and papers of record in the office of the recorder of deeds for the District of Columbia which were referred to and read in the court below and in the orphans' court of the District of Columbia from inadventance were omitted from the said transcript by reason of the large number of exhibits included in said transcript. Said deeds and papers are as follows:

1. A certified copy of a deed of trust from Alfred Brown to E. A. McIntire, trustee, dated May 4, 1883, and recorded in Liber 1043, at folio 6, of the land records of the District of Columbia.

2. A certified copy of a deed of trust recorded in Liber 907, at folio 164, of the said land records.

3. Certified copy of a release by E. A. McIntire, trustee, to Alfred Brown, dated June 11, 1886, and recorded in Liber 1182, folio 377, of the said land records.

4. Certified copy of deed of John Southey *et ux.* to Cornelius Cohan, recorded in Liber 834, at folio 105, of said land records.

5. Certified copy of deed from Emma Taylor to Joseph Forrest, filed as Exhibit A. H. No. 14 in equity cause No. 10745, McIntire *vs.* McIntire, in the supreme court of the District of Columbia.

5½. Copy of Exhibit A. H. No. 42, being certified copy of a deed from E. A. McIntire to Emma Taylor.

6. A certified copy of a petition filed in the orphans' court of the District of Columbia March 5, 1886, in the matter of the estate of David McIntire, deceased, endorsed "Petition of Sarah McIntire and others," with the testimony of William F. MacLennan, in this case.

502 7. Certified copy of a paper filed December 11, 1885, in the matter of the estate of Ada McIntire, deceased, in the orphans' court of the District of Columbia, endorsed "Renunciation of Emma T. McIntire as an executrix."

8. Certified copy of a paper filed in said orphans' court November 20, 1885, in the matter of the estate of Adaline McIntire and endorsed "Order of court, Dec. 11," &c.

9. Certified copy of a paper filed August 5, 1885, in the orphans' court of the District of Columbia in the matter of the estate of David McIntire, deceased, endorsed "Petition of Martha, Emma T., and Sarah McIntire for partial distribution" and offered in evidence in connection with the testimony of said MacLennan.

10. Certified copy of a paper filed July 31, 1885, in the said orphans' court in the matter of the estate of David McIntire, deceased,

endorsed "Answer of Martha McIntire and others" and offered in evidence in connection with the testimony of said MacLennan.

11. Certified copy of a paper filed in said orphans' court November 20, 1885, and endorsed "Renunciation of Emma T. McIntire."

I. And she prays in respect of said papers that she may have leave to file in this court a supplemental transcript containing said records.

II. The petitioner avers that said cause cannot be fairly and fully heard in this court without a reference to said papers.

3. Your petitioner further avers that in the transcript of the record as now in this court there are copies of a number of exhibits, the originals of which it is important should be before this court for the purposes of comparison of handwriting, and also to show the condition of said exhibits; that the testimony shows that said papers or exhibits are so marked with erasures, interlineations, etc., that no adequate idea of their condition can be obtained by a mere copy of the same, but that it is absolutely necessary to a fair and full hearing of the matters in issue in this cause that said originals should be before the court.

503 4. That one of the principal issues in this cause grows out of alleged forgeries and spoliations of deeds and papers, for which purpose it is necessary that the court should have before it the said originals.

5. The papers which your petitioner refers to are herewith enumerated, to wit: Joint answer of the defendants to the bill in this cause. Said answer contains the answer of Martha McIntire, in her handwriting, to interrogatories 1 & 2 of the original bill;

Exhibit A. H. No. 3—Deed from Mary C. Pryor to Martha McIntire;
" " No. 12—Deed from Emma Taylor to Alfred Brown;
" " No. 14—Deed from Emma Taylor to Martha McIntire;
" " No. 18—Medford & Waldron contract;
" " No. 30—Spencerian copy book;
" " No. 32—Same;
" " No. 31—Package of checks;
" " Nos. 62, 63, & 15—Photographs of signatures;

testimony of defendants, containing signatures of Emma T. McIntire in Pryor, Hayne, and Brown cases respectively, equity, Nos. 12761, 13177, and 12977; deed from Emma Taylor to Joseph Forrest, being Exhibit A. H. No. 14, eq., 10745 of said supreme court, and offered in evidence in these cases; testimony of plaintiffs in said eq. cause 10745, containing originals of certain photographs of cards and offered in evidence in these cases.

Your petitioner therefore prays that she may have an order for the production of said original papers, as provided in rule 6 of this court.

And your petitioner will ever pray, &c.

FRANKLIN H. MACKEY,
Sol. for Appellant.

504 DISTRICT OF COLUMBIA, *ss:*

Franklin H. Mackey, being duly sworn, deposes and says that he is counsel for petitioner in this cause; that the papers and exhibits set forth in the foregoing petition, as omitted from the transcript, and also the originals of certain papers set forth in said petition, are material and necessary to a fair trial of the cause on its merits, and that the application made in said cause is not made for purposes of delay.

FRANKLIN H. MACKEY.

Subscribed and sworn to before me this 3d day of October, A. D. 1895.

ROBERT WILLETT, *Clerk.*

Endorsed: Court of Appeals D. C., April term, 1895. No. 465. Mary C. Pryor, appellant, *vs.* E. A. McIntire *et al.*, appellees. Petition for leave to file supplemental transcript of record and for an order for the production of original papers. Court of Appeals, District of Columbia. Filed Oct. 3, 1895. Robert Willett, clerk.

505 In the Court of Appeals of the District of Columbia.

PRYOR *vs.* MCINTIRE *et al.*	No. 465.
BROWN *vs.* SAME.	No. 466.
SOUTHEY *vs.* SAME.	No. 468.
ACKERMAN *vs.* SAME.	No. 467.
HAYNE *vs.* SAME.	No. 469.

Enoch Totten, Esq., solicitor for defendants, appellees in the above-entitled cases.

DEAR SIR: Herewith we serve you with copies of a petition we have filed in each of the above-entitled cases and beg you to take notice that on Monday morning, October 7, 1895, at the opening of the court, or as soon thereafter as counsel can be heard, we shall call up the same for hearing.

Very respectfully,

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
WM. W. BOARMAN,
Sol's for Pl'ffs, Appellants.

I have no objection to having the records referred to within brought up as prayed.

ENOCH TOTTEN,
For Appellees.

Endorsed: Court of Appeals D. C., April term, 1895. Nos. 465, 466, 467, 468, 469. Pryor *vs.* McIntire *et al.*, 465; Brown *vs.* Same, 466; Ackerman *vs.* Same, 467; Southey *vs.* Same, 468; Hayne *vs.* Same, 469. Agreement of counsel to the bringing up of papers as prayed for in the petition filed in these cases. Court of Appeals, District of Columbia. Filed Oct. 3, 1895. Robert Willett, clerk.

506 MONDAY, *October 7th, A. D.* 1895.

MARY C. PRYOR, Appellant,
vs.
EDWIN MCINTIRE and MARTHA MCINTIRE. } No. 465. October Term, 1895.

Upon hearing the appellant's petition for leave to file supplemental transcript of record, and for the production of original papers in the above-entitled cause, it is, by consent of counsel, ordered that said petition be, and the same is hereby, granted.

Per MR. JUSTICE MORRIS.

October 7, 1895.

507 In the Court of Appeals of the District of Columbia

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE. } No. 465.

Liber No. 1043, folio 6 *et seq.* F. J. J.

Alfred Brown
to
Edwin A. McIntire, tr. } Recorded May 16, 1883, 9.20 a. m. (4.) Trust.

This indenture made this fourteenth day of May in the year of our Lord one thousand eight hundred and eighty-three (1883) between Alfred Brown of the city of Washington in the District of Columbia of the first part, and Edwin A. McIntire of the same place trustee of the second part. Whereas the — Alfred Brown stands justly indebted unto E. Taylor of the said city in the sum of nine hundred dollars hath executed and delivered his twelve promissory notes of even date herewith, each for the sum of seventy-five dollars, and payable in 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33 & 36 months respectively after date to the order of the said Taylor with interest until paid at the rate of ten per cent. per annum, said indebtedness being on account of the purchase-money of the property hereinafter described; and being desirous to secure the punctual payment of said notes, when and as the same shall respectively become due and payable with all interest and costs due and accruing thereon he therefore executes these presents. Now there-

fore this indenture witnesseth that the said party of the first part, for and in consideration of the premises aforesaid and further the sum of one dollar in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted bargained, sold, aliened, enfeoffed released and conveyed, and doth by these presents, grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns, the following-described real estate, situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises known and distinguished as and being the northeast one-quarter part of lot thirty-one (31) in square three hundred and eighty-eight (388) being the east thirteen feet on "E" street southwest of said lot by a depth of sixty-two and one-half feet, together with all the improvements, ways, easements, rights privileges and appurtenances to the same belonging or in any-
508 wise appertaining and all the estate, right, title, interest and claim either at law or in equity or otherwise however, of the said party of the first part of, into or out of the said described real estate and premises. To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part his heirs and assigns in and upon the trusts nevertheless hereinafter mentioned and declared that is in trust to permit the said Alfred Brown his heirs or assigns to use and occupy the said described premises and the rents issues and profits thereof to take have and apply to and for his and their sole use and benefit until default be made in the payment of said notes or any one or more of them or any proper cost charge commission half commission or expense in and about the same. And upon the full payment of all of said notes and the interest thereon and all other proper costs charges commissions half commissions and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Alfred Brown his heirs or assigns at his or their cost. And upon this further trust that upon default being made in the payment of said notes or any one or more of them or any proper cost charge commission half commission or expense in and about the same then and at any time thereafter to sell the said described real estate and premises at public auction upon such terms and conditions and at such time and place and after such previous public advertisement as the said party of the second part his heirs or the trustee acting in the execution of this trust shall deem advantageous and proper and to convey the same in fee-simple to and at the cost of the purchaser or purchasers thereof who shall not be required to see to the application of the purchase-money and of the proceeds of said sale or sales first to pay all proper costs charges and expenses and to retain as compensation a commission of five per cent. on the amount of the said sale or sales secondly to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not and lastly to pay the remainder if any to said Alfred Brown

his executors, administrators or assigns. And the said Alfred Brown doth hereby agree at his own cost during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled to pay all taxes and assessments on said premises when due and to keep the said improvements insured against fire in some responsible fire insurance company to the satisfaction of said party of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured whether due or not; and that upon any default or neglect to so pay said taxes and assessments or to so insure, any party secured hereby may pay said taxes and assessments or may have said improvements insured, and the expenses thereof, shall be a charge hereby secured and bear like interest as the matter secured, and upon any such failure to pay said taxes and assessments or to so insure the said party of the second part, his heirs may sell the said described real estate and premises, and apply the proceeds of said sale as hereinbefore
509 directed. And it is expressly provided that if said property shall be advertised for sale under the provisions of this deed and not sold then the said trustees shall be entitled to one-half of the commission above provided to be computed on the amount of the debt hereby secured and the same is hereby secured.

In testimony whereof the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

ALFRED BROWN. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

UNITED STATES OF AMERICA, }
District of Columbia. }

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Alfred Brown, party to a certain deed bearing date on the fourteenth day of May, A. D. 1883, and hereto annexed, personally appeared before me, in the District aforesaid, the said Alfred Brown, who declares himself to be unmarried, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this fourteenth day of May, A. D. 1883.

WM. HELMICK, [SEAL.]
Justice of the Peace.

[Endorsed:] Fee, $2.25. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1043, fol. 6 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C. October 7, 1895. (Seal recorder of deeds, District of Columbia.) Geo. F. Schayer, dep. recorder of deeds.

Liber No. 907, folio 164 *et seq.* F. J. J.

Barbara Brown to Louis P. Shoemaker *et al.* } Recorded Feb'y 6th, 1879, 12 m. Trust.

This indenture made this fifth day of February in the year of our Lord one thousand eight hundred and seventy-nine between Barbara Brown unmarried of the city of Washington in the District of Columbia of the first part, and Louis P. Shoemaker and Albert F. Fox of the same place parties of the second part. Whereas the said Barbara Brown stands justly indebted unto Pierce Shoemaker of said District in the full sum of three hundred (300) dollars for which amount she the said Barbara Brown hath given her certain promissory note bearing even date herewith and payable to the order of the said Pierce Shoemaker at two (2) years from date with interest until paid at the rate of eight (8) per cent. per annum, said interest to be due and payable semi-annually the same being for money loaned and advanced and being desirous to secure
510 the punctual payment of said note when and as the same shall as aforesaid become due and payable with all interest and costs due and accruing thereon as well as any renewals or extensions therefore execute these presents; now therefore this indenture witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar in lawful money of the United States paid to her by said parties of the second part hath granted, bargained, sold, aliened, enfeoffed, released and conveyed and doth by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said parties of the second part and the survivor of them, his heirs and assigns, the following-described real estate situate in the city of Washington, District of Columbia, to wit, the same being known and designated on the ground plat or plan of said city as lot No. thirty-six (36) of Leonard Simmermacher and others recorded subdivision of lots from five (5) to ten (10) inclusive in square No. one thousand and two (1002), together with all the easements, hereditaments and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever whether in law or in equity of the said parties of the first part of, into, or out of the said piece or parcel of land and premises, to have and to hold the said piece or parcel of land and premises with the appurtenances unto and to the use of the said parties of the second part, the survivor of them, or his heirs and assigns. In and upon the trusts nevertheless hereinafter mentioned and declared that is in trust to permit the said party of the first part & her heirs or assigns to use and occupy the said described premises, and the rents, issues and profits thereof, to take, have and apply to and for her and their sole use and benefit until default be made in the payment of said note, insurance or taxes or any instalment of interest due thereon or any proper cost, charge, commission, half commission or expense in and about the same. And upon the full payment of all of said note and any extension or renewals thereof, and the interest thereon, and all

other proper costs, charges, commissions, half commissions and expenses incurred by means of these trusts, at any time before the sale hereinafter provided for to release and reconvey the said described premises unto the said Barbara Brown or *his* heirs or assigns, at her or their cost. And upon this further trust, that upon default being made in the payment of said promissory note at maturity or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, insurance or other proper expense in and about the same, then and at any time thereafter to sell the said piece or parcel of land and premises or any portion thereof, at public auction, in front of the premises after at least seven (7) days' notice of the time, place and terms of sale by advertisement in some one or more of the newspapers printed and published in the said city of Washington upon such terms and conditions, as the said trustee- or the survivor of them may deem most advantageous to the parties interested; and with further power to postpone the sale from time to time in their or
511 his discretion, and to resell on default of the purchaser. And upon this further trust upon full compliance with the terms of sale to convey the property sold in fee-simple to the purchaser or purchasers thereof, at his, her, or their cost and expense and without any liability to the said holder or holders or to the purchaser to see to the application of the purchase-money, and out of the proceeds of said sale or sales first to pay all proper costs, charges and expenses and to retain as compensation a commission of five (5) per cent. on the amount of said sale or sales; secondly to apply said purchase-money to the payment of whatever may then remain unpaid of the said note and the interest thereon, to the time of said sale, whether the same shall be due or not; and lastly, to pay the remainder if any, to said Barbara Brown or heirs or assigns. And the said Barbara Brown doth hereby covenant with the said parties of the second part the survivor of them, his heirs and assigns, that all taxes upon the said land shall be duly paid and that the building on said parcel of land shall be kept insured by the said party of the first part, during the continuance of this trust in some good and responsible fire insurance company or companies to the satisfaction of the parties of the second part in the sum of three hundred (300) dollars and the policy or policies of insurance be assigned to the said parties of the second part, as trustees under these presents; and further that in case the said Barbara Brown her heirs or assigns shall fail to pay taxes or to keep said property so insured and assigned, then the taxes may be paid and the property be insured for the amount aforesaid by the said parties of the second part the survivor of them, his or their heirs and assigns and the amount of premium and taxes paid shall be considered a part of the expense of said debt secured hereby in default of payment of which the said parties of the second part, the survivor of them his heirs and assigns shall have power to sell said property hereby conveyed as aforesaid and shall dispose of the proceeds of sale as hereinbefore provided. And it is further agreed that if the property shall be advertised for sale under the provisions of the deed and not

sold then the said trustees shall be entitled to one-half the commission above provided to be computed on the amount of the debt hereby secured.

In testimony whereof the said party of the first part hath hereunto set his hand and seal on the day and year first hereinbefore written.

BARBARA BROWN. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. F. GRAHAM.

DISTRICT OF COLUMBIA, *County of Washington*, } *ss*:

I, Geo. F. Graham, a notary public in and for the District aforesaid, do hereby certify that Barbara Brown, unmarried,
512 party to a certain deed bearing date on the fifth day of February, A. D. 1879, and hereto annexed, personally appeared before me in the District aforesaid, the said Barbara Brown being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and notarial seal this fifth day of February, A. D. 1879.

[NOTARIAL SEAL.] GEO. F. GRAHAM. [SEAL.]
Notary Public.

[Endorsed:] Fee, $2 50. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 907, fol. 164 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C. October 7, 1895. (Seal recorder of deeds, District of Columbia.) Geo. F. Schayer, dep. recorder of deeds.

Liber No. 1182, folio 377 *et seq.* F. J. J.

Edwin A. McIntire to Alfred Brown. } Recorded June 12, 1886, 12 m. Release.

Know all men by these presents that Edwin A. McIntire, trustee under two certain deeds of trust from Joseph E. Hayne and wife dated May 14, 1879, and recorded in Liber 914 fol. 494 and from Alfred Brown, bearing date on the fourteenth day of May A. D. 1883 and recorded in Liber 1043 folio 6 *et seq.*, of the land records of the District of Columbia, for and in consideration of the sum of one dollar, current money of the United States to him in hand paid by Alfred Brown, at and before the sealing and delivery of these presents, receipt of which is hereby acknowledged, hath released, remised, and conveyed, and doth hereby release, remise, quitclaim, and convey unto said Alfred Brown, his heirs, and assigns, the following-described real estate, situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of

land and premises, known and distinguished as and being the northeast one-quarter part of lot thirty-one (31) in square three hundred and eighty-eight (388) being the east thirteen feet front on E street, southwest of said lot, by a depth of sixty-two and one-half feet; to have and to hold the same, with the appurtenances, unto and to the use of said Alfred Brown, his heirs and assigns forever, fully released and discharged from the effect and operations of said deed of trust, the indebtedness secured thereunder having been fully paid, and the notes cancelled before the execution hereof.

Witness my hand and seal, this eleventh day of June, A. D. 1886.

EDWIN A. McINTIRE, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—

S. A. TERRY.

513 DISTRICT OF COLUMBIA, *ss:*

I, Seth A. Terry, a notary public in and for the District aforesaid, do hereby certify that Edwin A. McIntire, party to a certain deed bearing date on the eleventh day of June, A. D. 1886, and hereto annexed, personally appeared before me in the District aforesaid, the said Edwin A. McIntire being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this eleventh day of June, A. D. 1886.

[NOTARIAL SEAL.]

S. A. TERRY,
Notary Public.

[Endorsed:] Fee, $1.25. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1182, fol. 377 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C., October 7, 1895. (Seal recorder of deeds, District of Columbia.) Geo. F. Schayer, dep. recorder of deeds.

Liber 834, folio 103 *et seq.* F. J. J.

John Southey *et ux.* to Cornelius Cohen. } Recorded Oct. 16th, 1876, 11.30 a. m. Deed.

This indenture made this fourteenth day of October in the year of our Lord one thousand eight hundred and seventy-six between John Southey and Mary Southey his wife of the city and county of Washington District of Columbia of the first part and Cornelius Cohen of the city of Georgetown in the District of Columbia of the second part witnesseth that the said parties of the first part for and in consideration of the sum of eight hundred dollars in lawful money of the United States to them in hand paid by said party

of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bargained sold aliened enfeoffed released and conveyed and do by these presents grant bargain sell alien enfeoff release and convey unto the said party of the second part his heirs and assigns forever the following-described real estate situate in the city of Washington District of Columbia to wit, part of lot numbered twenty-one (21) in square numbered seventy-seven (77) and described as follows, Beginning for the same at a point on the south line of north I street seventeen (17) feet eastwardly from the northwestern corner of said lot, and thence east on the line of said street eighteen (18) feet thence south on a line at right angles with said street ninety (90) feet eleven inches thence west eighteen (18) feet and thence north ninety (90) feet eleven inches to said I street and place of beginning also that certain piece or parcel of ground situate
and lying in the city of Georgetown District of Columbia
514 and described as follows, beginning at the corner formed by
the intersection of the south line of Brown street with the east line of Caton street and running thence east on Brown street fifty-six (56) feet and nine (9) inches thence south eighty-seven (87) feet and eight (8) inches, thence west forty (40) feet to Caton street and thence by and with said Caton street to place of beginning, together with all the improvements, ways, easements, rights, privileges appurtenances and hereditaments to the same, belonging or in anywise appertaining and all the remainders, reversions, rents, issues and profits thereof, and all the estate right title interest and claim whatsoever either at law or in equity of the said parties of the first part of, in and to the said pieces or parcels of land and premises. To have and to hold the said pieces or parcels of land and premises with the appurtenances unto the said party of the second part his heirs and assigns to his and their sole use benefit and behoof forever, and the said parties of the first part for their heirs executors and administrators do hereby covenant promise and agree to and with the said party of the second part his heirs and assigns that they the said parties of the first part and their heirs shall and will warrant and forever defend the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by, from under or through them or any of them. And further that they the said parties of the first part and their heirs shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part his heirs and assigns make, execute, deliver and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances unto the said party of the second part his heirs and assigns as the said party of the second part his heirs or assigns or their counsel learned in the law shall advise devise or require.

In testimony whereof the said parties of the first part *hath* here-

unto set their hands and seals on the day and year first hereinbefore written.

JNO. SOUTHEY. [L. S.]
MARY SOUTHEY. [L. S.]

Signed, sealed, and delivered in the presence of—
CHAS. P. WEBSTER.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, Chas. P. Webster, a justice of the peace in and for the District aforesaid, do hereby certify that John Southey and Mary, his wife, parties to a certain deed bearing date on the fourteenth day of October, A. D. 1876, and hereto annexed, personally appeared
515 before me in the District aforesaid, the said John Southey and Mary, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary Southey, wife as aforesaid, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this fourteenth day of October, A. D. 1876.

CHAS. P. WEBSTER, [SEAL.]
Justice of the Peace.

[Endorsed:] Fee, $1.75. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 834, fol. 103 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C., October 7, 1895. (Seal recorder of deeds, District of Columbia.) Geo. F. Schayer, dep. recorder of deeds.

EXHIBIT A. H. No. 14.

This indenture, made this thirtieth day of December, in the year of our Lord one thousand eight hundred and eighty-two (1882) by and between Emma Taylor, of the city of Philadelphia, in the State of Pennsylvania of the first part, and Joseph Forrest, of the city of Washington, in the District of Columbia, of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of nine hundred and fifty dollars, in lawful money of the United States, to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and conveyed, and doth by these presents, grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns

forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises, known and distinguished as and being part of lot numbered four in square numbered one hundred and fifty-four (154) beginning for the same at the southeast corner of said lot four (4) and extending thence west along the north side of R street, twenty-one feet eight inches, thence north ninety feet to the north line of said lot, thence east twenty-one feet eight inches to the northeast corner of said lot and thence south ninety feet to the place of beginning.

Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof; and all the estate, right,
516 title, interest, claim, and demand whatsoever, either at law or in equity, of the said party of the first part, of, in, to, or out of the said piece or parcel of land and premises.

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit and behoof, forever.

And the said party of the first part, for herself, and for her heirs, executors and administrators, doth hereby covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that she the said party of the first part and her heirs shall and will warrant and forever defend the said piece or parcel of land and premises and appurtenances, unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through her the said Emma Taylor.

And further, that she the said party of the first part, and her heirs shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds, or other assurance in law for the more certain and effectual — of the said piece or parcel of land and premises and appurtenances, unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his counsel learned in the law shall advise, devise or require.

In testimony whereof, the said party of the first part has hereunto set her hand and seal on the day and year first hereinbefore written.

EMMA TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

DISTRICT OF COLUMBIA, *ss:*

I, Wm. Helmick, a justic- of the peace in and for the District aforesaid, do hereby certify that Emma Taylor, party to a certain deed bearing date on the thirtieth day of December, A. D. 1882, and

hereunto annexed, personally appeared before me, in the District aforesaid, the said Emma Taylor, who declares herself to be a single woman, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this thirtieth day of December, A. D. 1882.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Indorsed: Deed from Emma Taylor to Joseph Forrest. Received for record on the 4 day of January, A. D. 1883, at 2.30 o'clock p. m., and recorded in Liber No. 1029, folio 44 *et seq.*, one of the
517 land records of the District of Columbia, and examined by Geo. F. Schayer, dep. recorder. E. A. McIntire, real-estate broker, No. 913 F St., Washington, D. C.

I certify the foregoing is a true copy of Exhibit A. H. No. 14 on file in equity cause No. 10745, McIntire *v.* McIntire.

Witness my hand and seal this 7th day of October, A. D. 1895.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk Supreme Court, District of Columbia.

EXHIBIT A. H. No. 42.

Liber No. 967, folio 180 *et seq.* G. C. S.

Deed to E. A. McIntire, July 2, 1881. *R. R.*

Edwin A. McIntire, tr., to Emma Taylor. } Recorded April 28th, 1881, at 12 m. Deed.

This indenture made this first day of April in the year of our Lord one thousand eight hundred and eighty-one (1881) between Edwin A. McIntire of the city of Washington in the District of Columbia of the first part, and Emma Taylor of the city of Philadelphia in the State of Pennsylvania of the second part. Witnesseth: That whereas by deed dated June 8th A. D. 1880, Barbara Brown of the said city and District did grant and convey to the party of the first part certain real estate in the city of Washington District of Columbia in trust to secure the payment of a certain note and such authority in case of default in the payment of said debt or the interest thereon to sell said real estate at public auction: all of which will appear from said deed duly recorded in Liber No. 944 folio 75 *et seq.* one of the land records of said District: and said Barbara Brown having made default in the payment of said debt and the legal holder of the note for said indebtedness having requested a sale of said real estate: and the said party of the first part as trustee having after previous advertisement of the time,

manner, place and terms of sale, exposed said real estate herein conveyed on the first day of April A. D. 1881, at public auction at which said sale said party of the second part being the highest bidder for said herein-conveyed real estate became the purchaser thereof at and for the sum of four hundred ($400) dollars, which said amount hath been by her fully paid and satisfied to the said party of the first part, and the said party of the second part is entitled to a conveyance of said premises. Now therefore, this indenture witnesseth that the said party of the first part for and in consideration of the premises aforesaid, and further the sum of five dollars in lawful money of the United States to him in hand paid by the said party of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby
518 acknowledged has granted bargained sold conveyed and confirmed, and by these presents do grant bargain and sell convey and confirm unto the said party of the second part his heirs and assigns forever: all that certain lot or piece of ground situate in the city of Washington in the District of Columbia and known and described as lot 36 in Leonard Simmermacher's subdivision of original lot five in square one thousand and two (1002). Together with all the improvements ways easements rights privileges appurtenances and hereditaments to the same belonging, or in anywise appertaining, and all the estate, right title interest and claim whatsoever either at law or in equity of the said party of the first part of in and to the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises, with the appurtenances unto and to the use of the said party of the second part her heirs and assigns forever.

In testimony whereof the said party of the first part as trustee as aforesaid has hereunto set his hand and seal on the day and year first hereinbefore written.

EDWIN A. McINTIRE. [SEAL.]

Signed, seales, and delivered in the presence of—
WM. HELMICK.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Wm. Helmick, a justice of the peace in and for the county aforesaid, do hereby certify that Edwin A. McIntire, party to a certain deed bearing date on the first day of April, A. D. 1881, and hereunto annexed, personally appeared before me in the county aforesaid, the said Edwin A. McIntire being personally known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed. Given under my hand and seal this second day of April, A. D. 1881.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Indorsed: Fee, $1.50. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 967,

fol. 180 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C. March 24, 1893. Geo. F. Schayer, (seal), dep. recorder of deeds.

I hereby certify that the foregoing is a true copy of Exhibit A. H. No. 42, on file in the case of Pryor *vs.* McIntire, equity, No. 12761.

Witness my hand and seal this 7th day of October, A. D. 1895.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk Supreme Court, District of Columbia.

519 In the Supreme Court of the District of Columbia, Holding a Special Term, Probate Jurisdiction.

The petition of Edwin A. McIntire, of the city of Washington, D. C., respectfully showeth that Adaline McIntire, also known as Addie McIntire and as Adeline McIntire, late of the city of Washington, deceased, departed this life, at the residence of her mother, No. 1627 10 street N. W., in said city, on the 21st day of July, A. D. 1885.

That the said deceased left a last will and testament appointing her sister Emma T. McIntire and your petitioner as executors, which said will was duly proved before the register of wills of the District of Columbia on the 19th day of November, A. D. 1885, and in which said will the deceased leaves all her property, real, personal, and mixed, to the said Emma T. McIntire and Martha McIntire, sisters of the deceased.

That the said deceased left personal property to the value of about twenty-seven hundred dollars in stocks and bonds; that the said deceased left as next of kin her mother, Sarah McIntire, and sisters and brothers as follows: Martha McIntire, Elizabeth McIntire Test, your petitioner, Edwin A. McIntire, and Emma T. McIntire, and also several children of a deceased brother, Henry McIntire; that all of said parties are residents of the District of Columbia except Elizabeth McIntire Test, the wife of John Test, of the city of Philadelphia, and one of the children of said Henry McIntire, who is now supposed to be in one of the Western Territories.

That the said Emma T. McIntire, an executrix under the said will, has this day deposited in court a renunciation as said executrix. Your petitioner therefore prays that such letters may be granted to him in pursuance of the statute in such case made and provided; and your petitioner will ever pray, &c.

EDWIN A. McINTIRE.

DIST. OF COLUMBIA, *ss:*

Before me, the subscriber, personally appeared the above-named Edwin A. McIntire, who upon oath doth depose and say that the facts stated in the above petition as of his own knowledge are true,

and such as he has stated of his knowledge and belief are true, as he verily believes.

EDWIN A. McINTIRE.

Subscribed and sworn to before me this 20th day of September, 1885.

[SEAL.] M. J. GRIFFITH,
Notary Public.

On consideration of the petition of Edwin A. McIntire and it appears to the court that the will of the said deceased, dated May 17th, 1884, has been duly filed, and the execution thereof proven by the oath of three persons and no objection having been signified to the court, and the — Emma T. McIntire having renounced the trust, it is this eleventh day of December, A. D. 1885, ordered, adjudged, and decreed that said will be, and the same is hereby admitted to probate and record; and, further, that letters testamentary on said estate be, and the same are hereby, granted to Edwin A. McIntire, upon his giving bond in the penalty of five thousand dollars, conditioned for the faithful discharge of his trust.

520

A. B. HAGNER.

Dec. 11th, 1885.

[Endorsed:] No. 2165, D. 12. *In re* estate of Adaline McIntire, deceased. Petition of Edwin A. McIntire, executor of Adaline McIntire, and order of court of Dec. 11th, 1885, admitting will to probate and granting letters testamentary to Edwin A. McIntire, bond $5,000. 1885, Dec. 11, bonded & qualified. Office register of wills. Filed Nov. 20, 1885. H. J. Ramsdell, register D. C.

WASHINGTON, D. C., *Nov.* 27, '85.

DEAR BROTHER: The will of our sister Adaline, which was left at the register of wills' office yesterday, appoints you and me as executors.

As you can more easily attend to the settlement of the estate alone and have my entire confidence and the confidence of our whole family, as well as Addie's confidence, as she expressed in her will, I prefer that you act as *sole* executor.

To that end, I do hereby renounce all title or claim to letters testamentary.

Your sis'er, EMMA T. McINTIRE.

To Edwin A. McIntire.

[Endorsed:] No. 2165. *In re* estate of Adaline McIntire, deceased. Renunciation of Emma T. McIntire, one of the executors. Office register of wills. Filed Nov. 20, 1885. H. J. Ramsdell, register D. C.

In the Supreme Court of the Dist. of Columbia, Probate Jurisdiction.

The undersigned, Emma T. McIntire, appointed an executrix in the last will and testament of Adaline McIntire, deceased, doth hereby refuse to act as executrix of said will and doth therefore renounce all title, claim, and right to letters testamentary upon said deceased's estate and all right, title, and claim that she may or could have had by virtue of said appointment, it being her wish that her brother, Edwin A. McIntire, who was also named in said will as executor, be appointed sole executor of said estate.

In testimony whereof she, the said Emma T. McIntire, doth hereunto subscribe her name this eleventh day of December, A. D. 1885.

EMMA T. McINTIRE.

Sworn to before me this 11th day of December, 1885.
[SEAL.]
M. J. GRIFFITH,
Notary Public.

521 [Endorsed:] No. 2165, D. 12. Estate of Adaline McIntire. Renunciation of Emma T. McIntire as an executrix. Office register of wills. Filed Dec. 11, 1885. H. J. Ramsdell, register D. C.

In re Estate of DAVID McINTIRE, Deceased.

Answer of Martha McIntire, Emma T. McIntire, and Sarah McIntire to rule to show cause why the petition of Charles McIntire, Sr., filed in this court on June 5th, 1885, to vacate the decree of this court of April 12th, 1884, admitting the will of David McIntire to probate and permitting the said Charles McIntire, Sr., to contest the validity of said will, and that issues for that purpose be framed and sent to the circuit court for trial before a jury should not be granted shows the following:

The said respondents are citizens of the city of Washington, D. C., the said Martha McIntire and Emma T. McIntire being heirs-at-law and legatees under the will of the said David McIntire, deceased, and the said Sarah McIntire, the widow of the late Edwin T. McIntire, dec'd, is the mother of said legatees and is the assignee of the late Adaline McIntire, deceased, who died July 21st, 1885, and who was also one of the heirs-at-law and legatees of the said David McIntire, deceased. A copy of said assignment is herewith filed, marked Exhibit "A," and made a part of this answer.

Respondents Martha McIntire and Emma T. McIntire and the late Adaline McIntire were present at the funeral of said David McIntire, in Glenwood cemetery, in the city of Washington, and accompanied the remains to the Baltimore and Potomac Railroad depot when they were about to be conveyed to Philadelphia, and all of said respondents were present at the residence of the respondents when the will of said David McIntire was read to said respondents by E. A. McIntire immediately after the funeral of said David McIntire.

Respondent Martha McIntire, being the oldest of the legatees

named in the will, petitioned this honorable court on the 11th day of April, 1884, that her brother, E. A. McIntire, be appointed as administrator *c. t. a.* of the estate of the said David McIntire, deceased.

Respondents Martha McIntire and Emma T. McIntire were present in court on the day that letters of administration were granted to said E. A. McIntire, and they heard the said E. A. McIntire advise the court as to the names of all the relatives of the deceased; they heard the said E. A. McIntire say that he had written to Charles McIntire, of Easton, Pa., and saw him present to the court and read in its hearing a reply from said Charles McIntire, wherein the said Charles McIntire asked to be furnished with a copy of the will of said David McIntire, deceased. Said respondents were sureties on the bond of their brother, E. A. McIntire, as administrator *c. t. a.* and signed as such sureties, believing then as they believe now that they were fully qualified and competent as such sureties, notwithstanding averments made to the contrary by
522 Charles McIntire, Jr., and Annie Laura Galliher in equity cause # 9330.

Each of said respondents say that after the filing of the suit just referred to in the preceeding paragraph (viz., equity cause 9330) they and Mrs. Test and also the late Adaline McIntire, with a desire to avoid a family quarrel and scandal and prevent injury to the complainants, advised the said E. A. McIntire that they had the utmost confidence in his honesty and integrity and begged and urged that he quickly close the controversy by charging his account with the amount in dispute and accept the receipts which respondents tendered him, and it was only after repeated and urgent solicitation on their part that he consented to do as they wished him.

Each of said respondents and also the late Adaline McIntire knew within three months after the death of said David McIntire of the amount and character of his estate, and it was with their full knowledge and consent and by their advice and the advice of Mrs. Elizabeth M. Test, also a legatee under said will, that the administrator delayed filing his inventory solely to avoid the necessity of applying to his friends or the friends of the family for increased bond, the said respondents and the said Mrs. Test with the administrator himself representing more than five-sixths of the estate.

Respondents believe, and so believing, charge that the petitioner had full knowledge of the proceedings instituted by his son in the above-recited cause, and that the son advised and consulted with the father before the institution of said proceedings, and they further charge that in every proceeding from the first notification the father received of the death of said David McIntire and his reply thereto asking for a copy of the will until his filing his recent petition the said Charles McIntire, Sr., and his son, Charles McIntire, Jr., have acted with each other's consent and advice in such manner as they have considered for their mutual benefit and advantage.

Respondents insist that after this long acquiescence in the validity of the will of the said David McIntire and in the probate thereof, with full knowledge and assent on the part of the petitioner to all

the proceedings which have been had in this honorable court based upon the validity of the said will, he should not now be permitted to question the same or the probate thereof.

And, having fully answered, respondents respectfully pray that the rule may be discharged and the petition dismissed at the cost of the petitioner.

MARTHA McINTIRE.
EMMA T. McINTIRE.
SARAH McINTIRE.

CITY OF WASHINGTON, *District of Columbia*, } ss:

Martha McIntire, Emma T. McIntire, and Sarah McIntire, being duly sworn, depose and say that they have each read the foregoing answer by them subscribed and know the contents thereof;
523 that the matters and things therein stated as of their personal knowledge are true and those stated on information and belief they believe to be true.

MARTHA McINTIRE.
EMMA T. McINTIRE.
SARAH McINTIRE.

Sworn to before me this 30th day of July, 1885.

[SEAL.] M. J. GRIFFITH,
Notary Public.

EXHIBIT "A."

For value received I hereby assign, transfer, and set over unto Sarah McIntire, her heirs and assigns, all my rights, titles, claims, demands, and interest in and to any part or parcel of the estate of David McIntire, deceased, and hereby direct the administrator to pay over to said Sarah McIntire, her heirs or assigns, such sum or sums of money as are now due or may hereafter be awarded to me upon settlement of said estate, taking her or their receipt as a full quittance from me and my heirs.

Signed and sealed at Washington, D. C., this 20th day of February, A. D. 1885.

ADALINE McINTIRE. [SEAL.]

Witnesses:
MARTHA McINTIRE.
WALTER A. TEST.

[Endorsed:] No. 1532, D. 11. *In re* estate of David McIntire. Answer of Martha McIntire, Emma T. McIntire, & Sarah McIntire to the rule to show cause, &c. Office register wills, D. C. Filed July 31, 1885. H. J. Ramsdell, register D. C.

In the Supreme Court of the District of Columbia, Holding a Special Term, Probate Jurisdiction.

In re the Estate of DAVID MCINTIRE, Dec'd.

To the hon. the judges:

The petition of Sarah McIntire, Martha McIntire, Elizabeth McIntire Test, Edwin A. McIntire, and Emma T. McIntire respectfully represents—

That David McIntire departed this life on April 1st, 1884, leaving a will, which was proven on the 8th day of April, 1884, duly admitted to probate and record on the 12th day of April, 1884, and recorded in Will Book No. 21, page 234, &c., by which said will he devised to his nieces and nephew, children of his brother Edwin T. McIntire, certain special legacies, with remainder to be divided between said nieces and nephew and a certain nephew the son of his brother Charles McIntire.

That the said Martha McIntire, Elizabeth McIntire Test, and Emma T. McIntire are the nieces and the said Edwin A.
524 McIntire the nephew alluded to as the children of the late Edwin T. McIntire, and that the said Sarah McIntire is the widow of the said Edwin T. McIntire, the mother of said special legatees and the assignee of the late Adaline McIntire, who was also one of said nieces and who departed this life on the 21st day of July, A. D. 1885.

That on the 5th day of June, 1885, the said Charles McIntire, a brother of the deceased, filed a petition in this court with a view to revoke the probate of said will, and if said will is set aside your petitioners would then, instead of receiving the bulk of the estate, be entitled to only one-half thereof.

That, on the suggestion of the administrator and by order of court passed February 19th, 1885, the funds belonging to said estate were deposited in the vaults of the Washington Safe Deposit Co., in box number 874, the keys of which box are now and have been since February 19th, 1885, in the custody of the register of wills, and that by an account filed by the administrator *c. t. a.* at the expiration of his year, to wit, on the 15th day of May, 1885, it was shown that the estate consisted entirely of personal property and that there was ready for distribution the sum of $57,161.90.

That, believing the wishes of the deceased have been fully expressed by him in his own writing and in his own language, that the will probated was his will, that he was fully competent to make such disposition of his own property, that the estate was judicially administered and the accounts properly stated, your petitioners have felt called upon to oppose to the fullest extent of the law any action looking to the cancellation of so solemn an undertaking. They have to that end retained as counsel Gen'l S. S. Henkle, who for some months past has been managing their interests.

Your petitioners, however, feel that some remuneration should at this time be made to said counsel for his services, and they therefore pray that an allowance from said funds of the sum of five hun-

dred dollars ($500) be ordered by this court on account thereof, and that the register of wills be directed to allow the administrator to withdraw that amount from the Washington Safe Deposit Co., and that such further or other proceedings in the premises should be had as may be legal and proper.

SARAH McINTIRE.
MARTHA McINTIRE.
ELIZABETH M. TEST.
EDWIN A. McINTIRE.
EMMA T. McINTIRE.

It is this 5th day of March, 1886, ordered that the register of wills pay to S. S. Henkle five hundred dollars out of the funds in his custody belonging to the estate of David McIntire, dec'd, to be charged to the distributive shares of the petitioners, Sarah McIntire, Martha McIntire, Elizabeth M. Test, Edwin A. McIntire, and Emma T. McIntire.

W. S. COX, *J.*

$500. Received, at Washington, D. C., March 6, 1886, from H. J. Ramsdell, register of wills, five hundred dollars out of the
525 estate of David McIntire, deceased, under the above order of court, passed March 5, 1886.

S. S. HENKLE.

Money, 25 $20 notes, brought from Washington Safe Deposit Co. by H. J. Ramsdell, register of wills, and delivered to Gen'l S. S. Henkle by M. J. Griffith.

[Endorsed:] No. 1532, D[11]. *In re* estate of David McIntire, deceased. Petition of Sarah McIntire and others, praying the court to allow S. S. Henkle, Esq., att'y, $500 out of the funds in the custody of the court belonging to said estate and order of court directing the register of wills to pay the same. Office register of wills. Filed March 5, 1886. H. J. Ramsdell, register D. C.

In the Supreme Court of the District of Columbia, Sitting in Probate and Administration.

In re Estate of DAVID McINTIRE, Dec'd.

The petitioners, Martha, Emma T., and Sarah McIntire, respectfully represent that the first two of the petitioners are heirs-at-law and legatees under the will of said David McIntire, deceased, and the other petitioner is the widow of Edwin T. McIntire, who was a brother of the testator and is the mother of the first two petitioners and also of Adaline McIntire, who was also a legatee and heir of said David McIntire, who died July 21st, 1885. Before her death the said Adaline assigned and transferred to the said Sarah McIntire her legacy and interest in the said estate of the said David McIntire.

Petitioners further represent that the administrator *c. t. a.* has

filed his account for settlement, by which it appears that there is in his hands about fourteen thousand two hundred and sixty-three dollars in money and assets immediately convertable into money, and that there are also in his hands railroad stocks and bonds which are appraised at thirty-nine thousand five hundred and eighty-two dollars.

There are no outstanding debts except about fifty dollars for attorney's fees to Mr. Newton and those reported by said administrator in his said account. The money and stocks and bonds are deposited, by order of the court, in the Washington Safe Deposit Company's vault, the box being under the control of the register of wills.

Charles McIntire, Sr., having filed his petition for a contest of the will, the final settlement and distribution of the estate will probably be delayed indefinitely until the determination of the controversy inaugurated by said proceeding.

Petitioners represent that in the event that the will should be finally set aside they would be entitled each to the one-fifth of the half of said estate as heirs-at-law of said David McIntire, less the amount of $2,500 each, with which they have already charged themselves.

Petitioners are much in need of their shares of said estate,
526 and, inasmuch as no harm can possibly come to any legatee or heir-at-law of the said David McIntire in case a partial distribution be made to them upon this basis—

They therefore pray your honor to order a reference to the auditor of the court to ascertain and report to the court the basis upon which a partial distribution of said estate may be made in such a way as to save all persons interested in said estate harmless in the event that the will should be finally set aside and the estate distributed as an intestate estate.

MARTHA McINTIRE.
EMMA T. McINTIRE.
SARAH McINTIRE.

[Endorsed:] No. 1532, D. 11. *In re* estate of David McIntire. Petition of Martha, Emma T., and Sarah McIntire for partial distribution. Office register of wills. Filed Aug. 5, 1885. H. J. Ramsdell, register D. C.

Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

Estate of DAVID McINTIRE, Dec'd. No. 1532, Doc. 11.

OFFICE OF THE REGISTER OF WILLS.

DISTRICT OF COLUMBIA, *To wit:*

I hereby certify that the foregoing is a true copy of the original petition of Sarah McIntire *et al.*, answer of Martha McIntire *et al.* to rule, and petition of Martha McIntire *et al.* for partial distribution, estate of Adaline McIntire, dec'd, No. 2165, doc. 12; petition

for probate of the will, order of court granting prayer, letter from Emma T. McIntire, and renunciation of Emma T. McIntire as executrix, filed in the office of the register of wills for the District of Columbia.

Seal Supreme Court of the District of Columbia.

Witness my hand and the seal of the supreme court of the District of Columbia, special term for orphans' court business, this 4th day of October, A. D. 1895.

J. NOTA McGILL,
Register of Wills, District of Columbia.

Ordered that the foregoing pages, 1 to 51 inclusive, be filed as addition to record in Pryor *vs.* McIntire, No. 465, and that appellant have leave to produce originals on the hearing, counsel for appelle-s consenting thereto in open court.

October 7, 1895.

M. F. MORRIS,
Associate Justice.

Endorsed on cover: Court of Appeals, District of Columbia. No. 465. Mary C. Pryor, appellant, *vs.* Edwin A. McIntire, Martha McIntire. Addition to record. Court of Appeals, District of Columbia. Filed Oct. 7, 1895. Robert Willett, clerk.

527 TUESDAY, *December* 3, *A. D.* 1895.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. McINTIRE, MARTHA McINTIRE. } No. 465.

and

ELIZABETH BROWN, Appellant,
vs.
EDWIN A. McINTIRE & MARTHA McINTIRE. } No. 466.

and

ANNIE M. ACKERMAN, Appellant,
vs.
EDWIN A. McINTIRE & MARTHA McINTIRE. } No. 467.

and

CATHERINE SOUTHEY, MARGARET COLE, & MICHAEL COHEN, Appellants,
vs.
EDWIN A. McINTIRE, MARTHA McINTIRE. } No. 468.

and

LAURA HAYNE & JOSEPH E. HAYNE, Appellants,
vs.
EDWIN A. McINTIRE. } No. 469.

The argument in the above-entitled causes was commenced by Mr. F. H. Mackey, attorney for the appellants, and was continued by Mr. Enoch Totten, attorney for the appellees.

528 WEDNESDAY, *December 4th, A. D.* 1895.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE. } No. 465.

and

ELIZABETH BROWN, Appellant,
vs.
EDWIN A. MCINTIRE & MARTHA MCINTIRE. } No. 466.

and

ANNIE M. ACKERMAN, Appellant,
vs.
EDWIN A. MCINTIRE & MARTHA MCINTIRE, } No. 467.

and

CATHERINE SOUTHEY, MARGARET COLE, & MICHAEL COHEN, Appellants,
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE. } No. 468.

and

LAURA HAYNE & JOSEPH E. HAYNE, Appellants,
vs.
EDWIN A. MCINTIRE. } No. 469.

The argument in the above-entitled causes was concluded by Mr. H. O. Claughton, attorney for the appellants.

529 MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE. } No. 465.

Mr. Justice SHEPARD delivered the opinion of the court:

This is one of a series of five cases, argued and submitted at the same time, wherein different parties, complainants, have sued the same defendants to cancel certain deeds and annul certain pretended sales of lands, in the District of Columbia, claimed to have been made by Edwin A. McIntire, trustee, in violation of his obligations and duties as trustee, in certain express trusts, and in pursuance of a scheme to defraud the makers and grantors therein. The other cases are, No. 466, Brown *v.* McIntire *et al.*; No. 467, Ackerman *v.* McIntire *et al.*; No. 468, Southey *et al. v.* McIntire *et al.*; No. 469, Hayne *et al. v.* McIntire.

A considerable part of the testimony is common to all of the cases and was taken in one under a stipulation for its consideration in all.

In this case the original bill was filed by Mary C. Pryor, October 21, 1890, against Edwin A. McIntire, Martha McIntire and Hartwell Jenison, followed by an amended bill, November 28, 1890.

Complainant alleges that, on May 2, 1880, she was seized, in her own right, of part of lots 21 and 22 in square 569 (the same fronting 19 feet on F street in the city of Washington), and that she and her husband, Thomas Pryor, since deceased, conveyed the same in trust to Edwin A. McIntire to secure the payment of a note for $450 made by them to defendant Hartwell Jenison. That she and her husband were colored people, ignorant of business methods, and relied upon the representations of said McIntire. That in the latter part of May, 1881, the note being then due and unpaid, he told them that he would be compelled to sell the property under the trust, but that said Thomas Pryor could bid off the property, and time would be allowed him to pay said indebtedness. That the sale was advertised and occurred June 17, 1881, when said Thomas Pryor became the purchaser at $700, and he and complainant remained in possession for some time. That McIntire informed them they should pay rent to him at $6 per month, which payments would be applied by him to the liquidation of the debt. That complainant has recently discovered that McIntire, instead of securing the property according to his representations, on the 28th of June, 1881, executed a deed, as trustee, to said lot to the said Hartwell Jenison, reciting a consideration of $806, which fact he concealed from complainant and her husband. That after making the said deed to said Jenison, said McIntire represented to him that the sum of $425 was necessary to pay taxes in arrears and expenses of sale, and procured from him authority to borrow said sum on the property. That he procured said Jenison to make a note for $425 to one Emma Taylor and to convey the lot to him, as trustee, to secure it. That about April 19, 1882, said McIntire represented to Jenison that the property could not be sold for more than the incumbrance, and induced him to execute a deed to said Emma Taylor for the amount thereof. Said deed was recorded April 21, 1882. That on September 27, 1887, McIntire again induced said Jenison to make a quitclaim deed to said Emma Taylor under the pretence that the same was necessary to recover certain drawbacks for special taxes on said property. That Emma Taylor is a fictitious person and an invention of McIntire's in aid of his scheme to defraud. That the $425 note to her was not necessary to pay the taxes, etc., on said property, and was a device of said McIntire's to cover up a fraud both upon complainant and said Jenison, who relied on his representations.

That on May 31, 1884, said McIntire caused a deed to be made and executed, in the name of said Emma Taylor, to his sister, Martha McIntire, upon a pretended consideration, but really for his own benefit, etc.

The prayers of the bill are that an account be taken of what is due by complainant on the $450 note of May 20, 1880, to Jenison, and of all rents and revenues of the property, and that upon payment by complainant of any balance due by her, the said deeds be declared null and void.

Defendant Hartwell Jenison filed an answer in which he says that he was not present at the sale of the property and had no

knowledge of any agreements, between McIntire and the said Pryors. He admits that he signed an order for sale at McIntire's request, and that a deed was made to him for the property. He admits the representation of McIntire about the amount due after the sale to remove incumbrances upon the lot, and the execution of the note for $425 to Emma Taylor and the execution of the trust deed. He admits that upon McIntire's representations he subsequently conveyed the property to said Emma Taylor, and also made the quitclaim to her. He says that he never saw said Emma Taylor and does not know that there is such a person. That he was not aware of any fraud, and acted throughout under the advice and representations of McIntire, and had perfect confidence in his good faith. He says also that he received nothing from the rent of said property during the time that he owned the same.

The answers of the McIntires deny all the allegations of fraud and the several agreements alleged by complainant. They say that the transactions were all with complainant's husband, who had frequently spoken of domestic trouble, and requested that all matters of business be kept from his wife and her relatives. That there was no understanding as to an extension of the debt when due, and that said Thomas Pryor told said McIntire he could not pay the note, and was willing to convey the equity to any one that would assume it. That accordingly, on May 3, 1881, complainant and her said husband conveyed the said property to Martha McIntire, subject to the trust deed of May 2, 1880. That on the next day, May 4, 1881, said Thomas Pryor entered into an agreement with said Martha McIntire for the lease of the premises for continuing his coal yard thereon. That afterwards, said Martha McIntire, finding out there was a large sum due for taxes, &c., on the lot, considered it was best to let it be sold under the trust deed. That the property was then advertised, on Jenison's authority, and also by his authority struck off to him for $806. That Jenison declined to pay the cost of sale, commissions, back taxes, etc., and authorized said McIntire to procure a loan of $425 for that purpose, which he did. That Jenison declined to pay that note when due, and decided to release his equity to the payee therein. That on June 29, 1881, in consideration of the surrender of his note, Jenison made a conveyance to said Emma Taylor who, about one month thereafter, conveyed to Martha McIntire.

That on September 27, 1887, said Jenison made a quitclaim deed to said Martha McIntire (and not to Emma Taylor, as alleged in the bill), to cure a defect in his former deed to Emma Taylor and to enable Martha McIntire to procure any rebate that might be made on account of the large sums paid for special taxes. They deny that Emma Taylor is a fictitious person, and say that she was "a Philadelphia lady who formerly lived in Washington, but is now living in the West." They allege also that Martha McIntire is a purchaser in good faith and has since erected four brick houses on the lot; and that complainant, although living near by, made no claim to the property, etc.

530 The cases were submitted together, below, as here. The learned justice before whom the hearing was had, declining to pass directly upon the issues of fact, and expressing no opinion with respect thereto, dismissed the bill, in each case, upon the ground of laches in the several complainants.

1. Before proceeding to the consideration of the question of laches we think it necessary, as well as proper, to state our conclusions with respect to the questions of fact that are in issue.

A great mass of evidence has been introduced not only concerning the particular issues in this cause, but also respecting the important issue, common to all the causes, as to the existence of the person called Emma Taylor.

Some of this evidence is incompetent, and much is inconsequential; but to review it in detail, pointing out those particulars and giving an abstract of that upon which our conclusions are founded, would, we think, be an unnecessary consumption of time and space.

Without, then, entering into those particulars we consider it sufficient to say, that after a careful consideration of such of the evidence as is clearly competent and relevant, we have arrived at the following conclusions:

(1) There is no such personage as the Emma Taylor who figures in the transactions of this and the other cases as grantee and grantor in certain deeds and instruments of writing. She is an invention of Edwin A. McIntire.

(2) Who actually signed the name, Emma Taylor, and personated her in acknowledging the execution of the many deeds purporting to have been made by her, need not be certainly ascertained. The evidence, however, tends strongly to show that Emma T. McIntire, sister of the defendants, signed the name to all of the said deeds. Two experts in handwriting, of reputed skill, express that opinion. Comparison of the Emma Taylor signature with certain signatures of Emma T. McIntire, acknowledged to be genuine, does not tend to lessen the weight of the expert testimony. Certain facts and circumstances tend to strengthen the conclusion.

Annie L. Galliher, who is the daughter of a brother of Emma T. McIntire, testified that her father's name was Edwin Taylor McIntire, and that the T in her name stood for Taylor; and that she was ordinarily called "Emma Taylor," in the family, to distinguish her from witness' sister Emma V. McIntire. Edwin, Martha, and Emma T. McIntire denied this, and said that Emma had herself assumed the T to distinguish her from other Emma McIntires, and it had suggested itself because her father had often called her "Tinsey ush," and she had, when small, called herself "Tots." Our conclusions with regard to the evidence of these persons, upon certain other points, are such that we cannot accept their statements as sufficient to overcome the evidence of a single unimpeached witness, who, besides, has no pecuniary interest in the case, whatever may be the ill feeling between her and them. Moreover, a certain unquestioned and unexplainable fact, which was under the circumstances relevant testimony, shows that the said brother and sisters were capable of such personation and fraudulent imposition upon

an officer authorized to authenticate instruments. They had another sister, Sarah I. McIntire, who died in Philadelphia, January 10, 1881, leaving a deposit of $1,196.60 in the Philadelphia Saving Fund Society. Martha McIntire drew this money upon the presentation of a power of attorney purporting to have been executed on May 2, 1881, by said Sarah I. McIntire, and acknowledged on the same day before a notary public in the city of Washington. The blank spaces of this instrument were filled out by E. A. McIntire, and he subscribed the same as a witness.

(3) Martha McIntire is not an innocent purchaser of the property in controversy in this or in any one of the cases. She and her sister Emma T. McIntire, have, under the influence of their brother Edwin, co-operated with him in his schemes to defraud this and other complainants.

Whether the money advanced from time to time in making loans, purchases and improvements, really belonged to Martha McIntire, is immaterial. As between her and her brother Edwin A. McIntire, it must be regarded as belonging to her. In taking an account thereof, and of rents received, whether in her name, or that of Emma Taylor, she must be regarded as the party interested.

(4) Hartwell Jenison is an old man, and has been engaged as a clerk in the Treasury Department of the United States for many years. He first loaned $500 on the property, taking the assignment of a note to Geo. E. Emmons secured by trust deed. The transactions were all arranged by and through a brother of Edwin A. McIntire, who was a fellow-clerk. Pryor paid the interest and $50 of the principal, the collection of which was attended to by Edwin A. McIntire. He negotiated a renewal for the remaining $450 of the principal, and caused a new note and trust deed, with himself as trustee, to be given by the Pryors. When the note matured, McIntire informed Jenison that the Pryors would pay no more, and that improvement taxes and incidental expenses would amount to about as much as the face of the note. Jenison, having no more money, requested McIntire to do the best he could with the property.

Jenison did not attend the sale, and was afterwards shown the deed made to him as purchaser. McIntire then caused him to execute a note for $425 to Emma Taylor, and a trust deed on the lot to secure the same. This sum McIntire told him was necessary to pay the taxes and expenses. McIntire found no purchaser for the property, and when the note fell due, Jenison, at his instance, conveyed the lot to Emma Taylor and received his note. No money was paid him. He subsequently, at McIntire's request, made the quitclaim to Martha McIntire to perfect the title, and was paid $100.

Jenison is apparently a credulous old man of little business capacity, and it is evident that he made no inquiry into the facts himself, but relied implicity on the statements of McIntire, who was his agent and trusted adviser throughout.

During the time that elapsed between the sale to him and his deed to Emma Taylor, McIntire collected $6 per month rent of Thomas Pryor, of which no account was rendered to Jenison.
531 Jenison has received $100 from the loan, and no interest whatever.

(5) Mary C. Pryor and her husband were simple-minded colored people, and relied fully in the integrity of Edwin A. McIntire, whom they believed to be their friend. They trusted him to arrange the second renewal of the loan and also the third. He led them to believe that a sale would be formally made on account of the Jenison note, but the property would be secured to them. He evidently led them to believe that the sale would be, and had been, made to Thomas Pryor. Probably he intended at first to continue the loan in the name of his sister Martha, for, on May 3, 1881, he caused the Pryors to convey the property to her, upon a recited consideration of $5 and the payment by her of the encumbrance thereon. On the next day the property was leased by her to said Pryor for $6 per month. The Pryors evidently understood this as carrying out the agreement by which time was given, and that the rent payments were to be devoted to the liquidation of the debt.

Pryor paid the rent for several years, until his business failed. He and his wife had the key to the place, on September 24, 1884, when, at the request of McIntire, they gave it to Mr. Mack, a tenant, who then entered and paid rent to Edwin A. McIntire regularly for about fourteen months. The complainant then claimed ownership of the property, and did to the builders who afterwards erected the houses now claimed by Martha McIntire.

(6) Complainant delayed the institution of her suit until October, 21, 1890, more than nine years after the sale under the Jenison trust deed. She was very poor and had but little intelligence. That she had perfect confidence in McIntire, in the beginning, is evident. She was kept in ignorance of the facts of the sale, and of the truth about the so-called Emma Taylor, and had no information with respect thereto until a short time before the institution of this suit, when she learned from the publication of the facts in a suit brought by certain heirs of David McIntire against Edwin A. McIntire, that said Emma Taylor was probably a fictitious person, whose name was used by said Edwin A. McIntire in perpetrating frauds upon her and others.

(7) The lot in controversy, at the time of the sale under the trust deed in June, 1881, was worth about $2,000 exclusive of the improvements. At the time the testimony in this cause was taken, September, 1893, the lot was worth about $3,900, exclusive of improvements. There were some back taxes due on the lot in 1881, but not so much as represented by McIntire to Jenison.

2. It remains now to consider whether the defendants shall be permitted to hold and enjoy the fruits of their fraud because of the laches of the complainant in the prosecution of her just and equitable claim.

In this consideration it must be borne in mind, that the complainant is an ignorant colored woman, unfamiliar with the transaction of business and easily deceived. She was poor and friendless. The assertion of her equity depended, for its foundation, upon parol evidence. Besides, it could avail nothing against the titles of Jenison and "Emma Taylor," who, as to her claim, were the apparent holders of superior equities. Until she learned that said "Emma

Taylor" was probably an invention of McIntire, and was thereby induced to inquire of Jenison concerning the facts, she can hardly be blamed for her inaction. Nor is there any reason for holding that she ought to have discovered those facts sooner.

Under all the circumstances we think the delay was not unreasonable. Moreover, there has been, in addition to the delay, no conduct whatever, under all the circumstances, that can be held to amount to acquiescence, or to a waiver of her right to redress. There has been no change in the situation of the parties; no sudden or great increase in the value of the property; no intervening equities of innocent persons; no loss of important testimony, nor death of witnesses whose evidence might probably have created a doubt with respect to the fraudulent conduct of the defendants.

Nothing but the mere lapse of time—less than one-half that which would bar an action at law to recover possession—stands between the complainant and the enforcement of her undoubted right.

It is true that one witness has died, pending the suit, whose testimony would have been material. This was William Helmick, the justice of the peace who certified to the acknowledgments of the several deeds by the so-called Emma Taylor. In the light of all the facts, however, it is not possible that defendants have been put to any disadvantage by the loss of his testimony. Presuming him to have been honest, as we must, his testimony would, more likely, have strengthened the case of the complainant. The so-called Emma Taylor was doubtless introduced to him by McIntire and he certified to her as well known to him through confidence in the truth of his representations. He could not have testified otherwise without making himself a party to the conspiracy to defraud, because, as we have heretofore announced, there was no such person as said "Emma Taylor" in existence.

The familiar maxim, that, "equity aids the vigilant," is a typical doctrine of equity jurisprudence, and, in its application, best illustrates the beneficent spirit of its administration. The rule is neither arbitrary nor technical; but capable of rigid contraction on the one hand, and of wide expansion on the other, in the sound discretion of the chancellor, according to the special circumstances of each particular case. This idea is well expressed by Mr. Justice Brewer, in the following words: "The length of time during which the party neglects the assertion of his rights, which must pass in order to show laches, varies with the peculiar circumstances of each case, and is not, like the matter of limitations, subject to an arbitrary rule. It is an equitable defense, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them." Holstead *v.* Grinnan, 152 U. S. 412, 416.

We are not content, however, to rest our decision of this case upon the sufficiency merely of the excuses offered for the delay.
532 They are not of the strongest, and in some classes of cases might be held insufficient. We will therefore go a step fur-

ther in the announcement of a doctrine applicable not only to this case, but those that have been argued and submitted with it.

The testimony clearly shows that Edwin A. McIntire, not satisfied with the liberal fees and charges of the business, conceived the idea, early in his relations with complainant, and with Jenison, of defrauding them. Taking advantage of the trust relations and the confidence reposed in him by simple-minded people, he concocted his several schemes and carried them into execution through false representations and personations and the spoliation of papers.

In such cases, where there are no intervening equities, no elements of estoppel, and no inequitable conduct on the part of the injured parties themselves, is not a court of equity warranted in holding that nothing short of the statutory period of limitations in analogous cases at law, should bar the remedy? We think so, clearly, and believe that we are supported both by reason and authority.

In Prevost *v.* Gratz, 6 Wheat. 481, 497, the court said: "It is certainly true that length of time is no bar to a trust clearly established; and in a case where fraud is imputed and proved, length of time ought not, upon principles of eternal justice, to be admitted to repel relief."

In the noted case of Michoud *v.* Girod, 4 How. 503, 560, where an executor's sale was set aside for constructive fraud after the lapse of more than twenty-seven years, Mr. Justice Wayne, speaking for the court, said: "In a case of actual fraud, courts of equity give relief after a long lapse of time, much longer than has passed since the executors, in this instance, purchased their testator's estate. In general, length of time is no bar to a trust clearly established to have once existed; and where fraud is imputed and proved, length of time ought not to exclude relief. Prevost *v.* Gratz, 6 Wheat. 481. Generally speaking, when a party has been guilty of such laches in prosecuting his equitable title as would bar him if his title were solely at law, he will be barred in equity, from a wise consideration of the paramount importance of quieting men's titles, and upon the principle that *expedit rei publicæ ut sit finis litium*; and, although the statutes of limitations do not apply to any equitable demand, courts of equity adopt them, or, at least, generally take the same limitations for their guide, in cases analogous to those in which the statutes apply at law. 10 Ves. 467; 1 Cox, 149. Still, within what time a constructive trust will be barred, must depend upon the circumstances of the case. Boone *v.* Chiles, 10 Pet. 177. There is no rule in equity which excludes the consideration of circumstances, and, in a case of actual fraud, we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it."

Our conclusion on this point has the support of the following well-considered cases: Lawrence *v.* Rokes, 61 Me. 38; Platt *v.* Platt, 58 N. Y. 646; Aylett *v.* King, 11 Leigh, 486; Gibbons *v.* Hoag, 95 Ill. 45, 69; Scherer *v.* Ingerman, 110 Ind. 428, 433; Ryle *v.* Ryle,

41 N. J. Eq. 582; Archibald *v.* Scully, 9 H. L. Cas. 360, 387; De Bussche *v.* Alt, L. R. 8 Ch. Div. 286, 314.

The case of De Bussche *v.* Alt is cited with approval by the Supreme Court of the United States. Kilbourn *v.* Sunderland, 130 U. S. 505, 519. In that case, which was one where agents had defrauded their principal, Chief Justice Fuller said: "Reasonable diligence is of course essential to invoking the activity of the court, but what constitutes such diligence depends upon the facts of the particular case. Where a party injured by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon discovery, and mere submission to an injury after the act inflicting it is completed cannot generally, and in the absence of other circumstances, take away a right of action, unless such acquiescence continues for the period limited by the statute for the enforcement of such right."

We find nothing in the later decisions of the Supreme Court, to which we have been referred by appellees, in denial of the doctrine of the earlier cases, or that which is expressed in the quotation from Kilbourn *v.* Sunderland, *supra*.

The case most relied on is Hammond *v.* Hopkins, 143 U. S. 224. But in that case the bill was filed immediately before the expiration of twenty years after the sale complained of. The court found there was no actual fraud on the part of the trustee and that everything was known to, and acquiesced in by, the *cestuis que trustent* at the time, and held that laches barred the complainants. That the distinction between that case and one of actual fraud, was borne in mind, is apparent from the concluding part of the opinion, where the court, speaking as in Kilbourn *v.* Sunderland, through the Chief Justice, said: "In all cases where actual fraud is not made out, but the imputation rests upon conjecture, where the seal of death has closed the lips of those whose character is involved, and lapse of time has impaired the recollection of transactions and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence."

In the latest expression of the court upon this subject, viz: Abraham *v.* Ordway, 158 U. S. 416, to which also appellees refer, there was no fraud. In fact all the equities of the case seemed to be on the side of the party complained of.

It is unnecessary to discuss the question further. We cannot, solely on account of the delay of the complainant, refuse to undo the frauds that have been committed against her, and deny her the relief to which she has shown herself to be entitled.

The decree appealed from must, therefore, be reversed, with costs to the appellant. The cause will be remanded to the court below, with direction to take an account of the indebtedness remaining due by the complainant to Hartwell Jenison, together with an account of the reasonable value of the rents and revenues collected by the defendants since May 4, 1881, or that should have been received by them, as well as of all moneys that have been expended by them or either of them in the payment of taxes and all other proper charges on said premises. And upon the coming in of such

report a final decree will be passed annulling each and all of the several trust deeds and conveyances that cloud the title to said premises, and awarding possession thereof to plaintiff upon her paying, within a reasonable time, whatever sums may be found to be actually due, first to said Hartwell Jenison and then to the defendant Martha McIntire upon the settlement of the account aforesaid; all costs to be taxed against defendants. It is so ordered.

533 MONDAY, *January 6th, A. D.* 1896.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE. } No. 465. January Term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said supreme court, with direction to take an account of the indebtedness remaining due by the complainant to Hartwell Jenison, together with an account of the reasonable value of the rents and revenues collected by the defendants since May 4, 1881, or that should have been received by them, as well as of all moneys that have been expended by them or either of them in the payment of taxes and all other proper charges on said premises, and upon the coming in of such report a final decree will be passed annulling each and all of the several trust deeds and conveyances that cloud the title to said premises and awarding possession thereof to plaintiff upon her paying within a reasonable time whatever sums may be found to be actually due, first, to said Hartwell Jenison, and then to the defendant Martha McIntire, upon the settlement of the account aforesaid, all costs to be taxed against defendants.

Per MR. JUSTICE SHEPARD.

January 6, 1896.

534 In the Court of Appeals of the District of Columbia.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE *et al.* } No. 465.

ELIZABETH BROWN, Appellant,
vs.
EDWIN A. MCINTIRE *et al.* } No. 466.

ANNIE M. ACKERMAN, Appellant,
vs.
EDWIN A. MCINTIRE *et al.* } No. 467.

LAURA HAYNE *et al.*, Appellants,
vs.
EDWIN A. MCINTIRE *et al.* } No. 469.

Motion for Re-assessment of Costs.

Now come the appellees in the above-entitled causes and move the court to amend the award and allowances of costs therein made in favor of the appellants so as to charge to said appellants all costs created and allowed on account and by reason of—

1. The introduction of incompetent testimony or depositions.
2. The introduction of inconsequential testimony or depositions.
3. The introduction of unnecessary, irrelevant, and immaterial testimony and depositions.

Objections to several of the above classes of evidence were made at the time and noted on the record. See Brown R., pp. 51 and 52 and 105; Pryor R., pp. 133, 136, 253, 254, and 257.

It is submitted that nearly, if not quite, half of the testimony adduced by these appellants and filed in these causes was wholly unnecessary and was improperly taken and filed and should
535 be charged to the parties who improperly brought it into the record.

ENOCH TOTTEN,
For Appellees.

Endorsed: Court of Appeals D. C., January term, 1896. Nos. 465, 466, 467, & 469. Brown *et al.*, appellants, *vs.* McIntire *et al.* Motion of appellees for re-assessment of costs. Court of Appeals, District of Columbia. Filed Jan. 21, 1896. Robert Willett, clerk.

WEDNESDAY, *January* 22*d*, *A. D.* 1896.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE. } No. 465. January Term, 1896.

Upon consideration of the appellees' motion for re-assessment of costs in the above-entitled cause, it is now here ordered that said motion be, and the same is hereby, overruled.

Per MR. CHIEF JUSTICE ALVEY.

January 22, 1896.

536 In the Court of Appeals of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. McINTIRE. } No. 465.

Now comes the appellee, through his attorneys, Enoch Totten and Frank T. Browning, and moves the court for an interpretation or modification of that part of the decree passed in the above-entitled cause which directs the auditor to take an account of the revenues and profits derived from the property mentioned in the proceedings had and taken in said cause, so that the same shall read that he is to take an account of the revenues and profits of the property without the improvements that were put thereon by Martha McIntire.

ENOCH TOTTEN AND
FRANK *W.* BROWNING,
Sol'rs for Appellee.

Mr. Franklin Mackey, attorney for appellant:

You will please take notice that on Friday next, at the opening of court on that day, or as soon thereafter as counsel can be heard, we will move the court to take up the aforegoing motion for the action of the court.

ENOCH TOTTEN AND
FRANK T. BROWNING,
Sol'rs for Appellee.

Service acknowledged Feb'y 12, 1896.
FRANKLIN H. MACKEY,
Sol. for Def't.

Endorsed: Court of Appeals D. C., January term, 1896. No. 465. Mary C. Pryor, appellant, *vs.* Edwin A. McIntire. Motion for interpretation or modification of decree. Court of Appeals, District of Columbia. Filed Feb. 12, 1896. Robert Willett, clerk.

537 MONDAY, *February 17th, A. D.* 1896.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. McINTIRE, MARTHA McINTIRE. } No. 465. January Term, 1896.

Upon hearing the appellees' motion for modification or interpretation of decree heretofore passed in the above-entitled cause, it is ordered that said motion be, and the same is hereby, denied.

Per MR. CHIEF JUSTICE ALVEY.

February 17th, 1896.

538 In the Court of Appeals of the District of Columbia.

EDWIN A. McINTIRE *et al.*, Appellants,
vs.
MARY C. PRYOR } No. 642.

and

MARY C. PRYOR, Appellant,
vs.
EDWIN A. McINTIRE *et al.* } No. 643.

Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. McINTIRE *et al.* } No. 12761. Equity.

UNITED STATES OF AMERICA,
District of Columbia, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Order Directing Mandate to be Filed & for Execution & Referring Cause to Auditor.

Filed January 29, 1896.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. McINTIRE *et al.* } In Equity. No. 12761, Doc. 31.

It appearing, this 29th day of January, A. D. 1896, that the mandate from the Court of Appeals of the District of Columbia upon the appeal of the complainant to said court has been duly returned to this court, it is ordered that the same be filed in this cause; and it appearing by said mandate that the decree from which said appeal was taken has been reversed by said Court of Appeals, with costs to the appellant and with directions for an accounting, it is therefore, this 29th day of January, A. D. 1896, ordered that the complainants have execution as at law for the sum of $1,051.10, being the amount of her costs incurred in prosecuting said appeal; and it is
539 further ordered that this cause be, and the same is hereby, referred to the auditor of this court to state an account between the parties, in accordance with the direction of said mandate, and return the same to this court with all convenient speed.

A. B. HAGNER.

Report of Auditor, with Testimony.

Filed June 16, 1896.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. MCINTIRE *et al.* } No. 12161. Equity.

This cause is referred to me to state an account of the indebtedness remaining due by the complainant to Hartwell Jenison, together with an account of the reasonable value of the rents and revenues collected by the defendants since May 4, 1881, or that should have been received by them, as well as of all moneys that have been expended by them or either of them in the payment of taxes and of other proper charges on said premises. After due notice I proceeded to execute this order of reference and return herewith the testimony and exhibits submitted by way of account and in proof.

In this cause, as in the case of Ackerman *v.* the same defendants, the accounting parties have failed to furnish any record of the management and revenues of the property in question. The defendant E. A. McIntire testified in a general way that he rented the property at one time for a certain rate of rental and at other times for different rates, but is quite unable to give any definite information as to the times or periods of occupancy of the property by tenants or the rates paid during any specified periods.

At the time of the alleged sale of the property, about June, 1881, the land was used for the purposes of a coal and wood yard, an agreement having been entered into between the defendant Edwin A. McIntire and Thomas Pryor whereby the latter rented from the firm the said premises for a period of one year from the 4th of May, 1881, and thereafter from month to month at the monthly rent of six dollars. Thomas Pryor evidently remained in possession or occupancy of the property until some time in 1883, as appears from rental receipts, which are filed in this cause as Exhibit A. H. No. 1, seven of these receipts being dated in 1881, eight in 1882, and one in 1883, and each being for the sum of $6.00. The complainant testifies that her husband, the said Thomas Pryor, did not pay his rent in full, and there is no evidence in the cause or in this reference showing the amount of rent paid by Pryor other than the receipts just referred to.

In September, 1884, George L. Mack rented the premises at the same monthly rate as specified in the Pryor agreement and
540 continued in possession for fourteen months. The complainant in her testimony states that Mack was the next tenant after her husband. On the 1st of October, 1884, the defendant Martha McIntire entered into a contract for the building of two houses on the F Street front of this property and two on the rear or

alley front, for which construction she was to pay the sum of $3,300. This agreement will be found on page 441 of the printed record in this cause. The houses were constructed and the contract price for such construction was either paid, or substantially paid, as appears in the proof.

Testimony taken here as to the rental and occupation of these several houses begins with the 1st of March, 1887, when one of the F Street houses was rented by Mrs. Agnes H. Reid at the rate of $25 per month, she and her family remaining there as tenants for a period of four years and three months and paying the same rental. No proof has been offered as to the names of tenants, the period of occupation, or of the rate of rental from the expiration of Mrs. Reid's tenancy of this property until 1893, when some agreements are filed.

As to the other house on F street, being No. 110, there is but little proof offered as to the names of the tenants or the period of occupation, although it does appear that this property during a portion of the time was rented at the same rate as the other house, No. 108. It also appears that both houses were alike in size and construction.

As to these two pieces, therefore, with the exception of the tenancy of Mrs. Reid, I have had to estimate as best I could, from the character of the property and such little evidence as has been furnished, the period of occupation and the rate of rental. In this connection the testimony of real-estate brokers was offered by the defendants, tending to show the average yearly period for which property of the same character would in their estimation be continuously rented, and the testimony of a witness who lived on F street near this property, who states in a general way that these two houses were unoccupied a considerable portion of the time. The testimony of the latter witness does not agree, in my opinion, with other evidence in the cause, and I have given it but little weight in estimating the periods of rental and occupation of the property.

As to the two houses fronting on the alley, quite a number of witnesses have been produced by the complainant, who have testified to their occupation period of the same and the rent paid by them, and while this testimony is to some extent indefinite and uncertain upon all these points, it serves to form a basis of estimate for the purposes of an account. Some additional proof has been submitted by the defendants in the form of two agreements of rental, one for each of these alley houses, and both dated in 1895. The material proof furnished by these agreements is the reduction of the rent from the rates at which the houses were previously rented.

In Schedule A, I have stated an account of the indebtedness due by the complainant to Hartwell Jenison, being the balance of the principal of a note of the complainant and her husband, dated
541 May 2, 1880, less an amount paid by the defendant E. A. McIntire and excluding interest on this balance, the same having been waived by Jenison in his testimony in this cause.

In Schedule B, I have stated an account of the rents and rev-

enues of this property prior to its improvement by the construction of the new houses, charging against the defendants rents received from Thomas Pryor and George L. Mack, as hereinbefore recited, and allowing taxes paid by the defendants during that period. The defendants file vouchers in the form of receipted tax bills, both for general and special taxes, during this period, which are allowed with the exception of two bills which appear to have been paid about the year 1878. Two bills are filed in support of these items—one for part of each of the two lots 21 and 22. The sale was made on the 14th of August, 1877, and interest is added from that date to the date of redemption, the calculation of which shows that the period for which the interest is charged is considerably less than one year from the date of sale, showing conclusively that the tax was paid in 1878, and therefore the defendants are not entitled to credit for the same in this accounting. This schedule shows an excess of expenditures by the defendants or by E. A. McIntire over and above the rental received by them.

In Schedule C, I have stated an account of rental after the completion of the two new houses on F street and two on Madison alley from such testimony or evidence as I have showing with certainty the period of occupation and the rate of rental, and as to the remainder of the time estimating the rental and occupancy from such proof as the case affords.

On the other side of this account I have allowed the excess of expenditures during the first period, as shown in Schedule B, together with the taxes paid by the defendants or by E. A. McIntire and shown by vouchers furnished; also the cost of insurance, repairs, and water rents. In the statement filed by E. A. McIntire credit is claimed for the taxes for the entire year ending June 30, 1896, but the vouchers furnished show payment of only the first half of that year.

Adding to these allowances the $100 paid by E. A. McIntire to Hartwell Jenison, this schedule shows the balance of the account as to rents and revenue.

The defendants claim further an allowance for the cost of construction of four houses, the contract price for which was, as I have before stated, $3,300. They also claim an additional allowance for other expenditures made in order to complete the houses, but upon this point the only proof is a vague estimate given by E. A. McIntire in his testimony, without vouchers. Several items for extras, which might not have been included in the builder's contract, are claimed for and have been allowed by me under the head of repairs, such as gas fixtures, paving, iron railings, etc. Inasmuch as the defendants are charged with the full rental of the property as improved from the date of the completion of the four houses, I am
of the opinion that they should be allowed the cost of the
542 construction, and have therefore deducted the amount of that
cost from the balance otherwise shown in Schedule C. I have not allowed interest on this expenditure, as I have not charged interest against the defendants on the balance of rents remaining

in their hands at various dates throughout the period covered by the account.

Among other contentions of the defendant is a claim that they should be charged with the rental value of the property as if the same had not been improved—that is, calculating the rental value at six dollars per month and estimating a partial occupation during each year. I do not find any reason for seriously considering this theory and therefore have not stated any alternative account on that basis.

JAS. G. PAYNE, *Auditor.*

Auditor's fee	45 00
Testimony	27 00
	72 00

Paid by complainant.

SCHEDULE A.

Account of Indebtedness Due by Complainant to Hartwell Jenison.

Principal of note of Thomas Pryor and Mary C. Pryor, May 2, 1880	$450 00
Less amount paid by E. A. McIntire	100 00
Balance of principal	$350 00

No interest claimed. (See report.)

JAS. G. PAYNE, *Auditor.*

SCHEDULE B.

Account of Reasonable Value of Rents and Revenues Collected or that Should Have Been Received by the Defendant Before Improvement of the Property.

Rents received from Thomas Pryor, as shown by agreement of rental, May 4, 1881, and seven receipts in 1881, 8 in 1882, and 1 in 1883, each for $6.00		$96 00
From George L. Mack from Sept. 24, 1884, for 14 months at $6.00		84 00
		$180 00
Contra.		
Taxes paid June 29, 1881	$18 95	
Ditto	22 04	
Ditto	5 00	
Ditto	6 72	
543 Special, June 30, 1881	94 72	
Ditto.	129 19	
General, June 30, 1882	18 95	
		295 57
Excess of expenditures		$115 57

Carried to Schedule C.

JAS. G. PAYNE, *Auditor.*

SCHEDULE C.

Account of Rental after the Construction of the Two Houses on F Street and Two on Madison Alley.

108 F street.

From Agnes H. Read, March 1, 1887, to June 1, 1891, at $25.00 per month	$1,275 00	
June 1, 1891, to December 1, 1893, estimated occupancy, 25 months, at $25.00	625 00	
December 1, 1893, to November 1, 1895, estimated 20 months, at $20.00	400 00	
November 1, 1895, to March 1, 1896, at $19.00	76 00	
		$2,376 00

110 F street.

March 1, 1887, to February 1, 1890, estimated occupancy 30 months, at $25.00	$750 00	
February 1, 1890, to August 1, 1891, at $25.00 per month (Rose Benzler)	450 00	
August 1, 1891, to December 1, 1894, estimated occupancy 33 months, at $25.00	825 00	
December 1, 1894, to November 1, 1895, at $20.00	220 00	
November 1, 1895, to March 1, 1896, at $19.00	76 00	
		2,321 00
		$4,697 00

Schedule C—Continued.

Brought forward	$4,697 00

108 Madison alley.

March 1, 1887, to March 1, 1895, estimated 72 months, at $10.00	$720 00	
March 1, 1895, to March 1, 1896, estimated 9 months, at $8.00	72 00	
		792 00

544 110 Madison alley.

March 1, 1887, to March 1, 1895, estimated 72 months, at $10.00	720 00	
March 1, 1895, to March 1, 1896, estimated 9 months, at $8.00	72 00	
		792 00
		$6,281 00

Contra.

Excess of expenditures, Schedule A.....		$115 57	
Sewer tax, paid April 9, 1891.....	$10 57		
General taxes, 1883 to January 1, 1896, per vouchers.....	628 56		
Insurance.....	28 80		
Repairs	390 57		
Water rents.....	42 00		
		1,100 50	
Paid Hartwell Jenison.....		100 00	
			1,316 07
			$4,964 93
Cost of construction of four houses completed on or before March 1, 1887.....			3,300 00
			$1,664 93

JAS. G. PAYNE, *Auditor.*

Exceptions of Edwin A. McIntire.

Filed July 8, 1896.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR *vs.* EDWIN A. MCINTIRE *et al.* } Equity. No. 12761.

The defendant Edwin A. McIntire excepts to the findings of the auditor as stated in his report filed in the above-entitled cause on June 16, 1896.

1. He excepts to that part of the auditor's report which charges the defendant with the rent of the property described in said report, and which allows the same to the complainant, Mary C. Pryor.

2. He excepts to that part of the report which charges against this defendant $25.00 per month rent for 108 "F" street from March 1st, 1887, to June 1st, 1891, and from June 1st, 1891, to December 1st, 1893, an estimated occupancy of 25 months, at $25.00 per month, and from December 1st, 1893, to December 1st, 1895, an estimated occupancy of 20 months, at $20.00 per month.

3. He excepts to that part of the report which charges him
545 with the rent of 110 "F" street from March 1st, 1887, to February 1st, 1890, an estimated occupancy of 30 months, at $25.00 per month, and from February 1st, 1890, to August 1st, 1891, at $25.00 per month, and from August 1st, 1891, to December 1st, 1894, an estimated occupancy of 23 months, at $25.00 per month, and from December 1st, 1894, to November 1st, 1895, at $20.00 per month, and from November 1st, 1895, to March 1st, 1896, at $19.00 per month.

4. He excepts to that part of the report which charges him with the rent of 108 Madison alley from March 1st, 1887, to March 1st, 1895, an estimated occupancy of 72 months, at $10.00 per month, and from March 1st, 1895, to March 1st, 1896, an estimated occupancy of 9 months, at $8.00 per month.

5. He excepts to that part of the report which charges him with the rent of 110 Madison alley from March 1st, 1887, to March 1st, 1895, an estimated occupancy of 72 months, at $10.00 per month, and from March 1st, 1895, to March 1st, 1896, an estimated occupancy of 9 months, at $8.00 per month.

6. He excepts to the finding of the auditor which charges him with the rent of the property as improved by Martha McIntire.

7. He excepts to that part of the report which charges him with the rent received from the improvements made upon the property after it was deeded to Martha McIntire.

8. He excepts to that part of the auditor's report which does not allow a credit for the note of $425.00 and interest, dated June 29, 1881, and drawn by Hartwell Jenison and filed as exhibit, marked "A. H." No. 26.

9. He excepts to the allowance of the auditor of only $42.00 for water rent.

10. He excepts to the auditor not allowing a credit to this defendant of the payment of the sewer taxes of December 10, 1896, amounting to $60.00.

11. He excepts to the non-allowance by the auditor to the defendant of the money paid out for summons issued against the different tenants under the landlord and tenants act, which aggregates the sum of $40.00.

12. He excepts to that part of the auditor's report which allows him but $3,300.00 for costs of construction of the four houses, to wit, 108 and 110 "F" street and 108 and 110 Madison alley, the costs of construction having been $4,000.00.

EDWIN A. McINTIRE.

ENOCH TOTTEN,
FRANK T. BROWNING,
Solicitors for Defendant Edwin A. McIntire.

546 *Exceptions of Martha McIntire.*

Filed July 9, 1896.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. McINTIRE *et al.* } Equity. No. 12761.

The defendant Martha McIntire excepts to the findings of the auditor, as stated in his report filed in the above-entitled cause on June 16, 1896.

1.

She excepts to that part of the said auditor's report which charges the defendant Edwin A. McIntire with the rent of the property de-

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scribed in said report and which allows the same to the complainant, Mary C. Pryor.

2.

She excepts to that part of the report which charges against the defendant Edwin A. McIntire $25.00 per month rent for 108 "F" street from March 1st, 1887, to June 1st, 1891, and from June 1st, 1891, to December 1st, 1893, an estimated occupancy of 25 months, at $25.00 per month, and from December 1st, 1893, to December 1st, 1895, an estimated occupancy of 20 months at $20.00 per month.

3.

She excepts to that part of the report which charges Edwin A. McIntire with the rent of 110 "F" street from March 1st, 1887, to February 1st, 1890, an estimated occupancy of 30 months, at $25.00 per month, and from February 1st, 1890, to August 1st, 1891, at $25.00 per month, and from August 1st, 1891, to December 1st, 1894, an estimated occupancy of 23 months, at $25.00 per month, and from December 1st, 1894, to November 1st, 1895, at $20.00 per month, and from November 1st, 1895, to March 1st, 1896, at $19.00 per month.

4.

She excepts to that part of the report which charges Edwin A. McIntire with the rent of 108 Madison alley from March 1st, 1887, to March 1st, 1895, an estimated occupancy of 72 months, at $10.00 per month, and from March 1st, 1895, to March 1st, 1896, an estimated occupancy of 9 months, at $8.00 per month.

5.

She excepts to that part of the report which charges Edwin A. McIntire with the rent of 110 Madison alley from March 1st, 1887, to March 1st, 1895, an estimated occupancy of 72 months, at
547 $10.00 per month, and from March 1st, 1895, to March 1st, 1896, an estimated occupancy of 9 months, at $8.00 per month.

6.

She excepts to the finding of the auditor which charges Edwin A. McIntire with the rent of the property as improved by Martha McIntire.

7.

He excepts to that part of the report which charges him with the rent received from the improvements made upon the property after it was deeded to Martha McIntire.

8.

She excepts to that part of the auditor's report which does not allow a credit for the note of $425.00 and interest, dated June 29, 1881, and drawn by Hartwell Jenison and filed as exhibit, marked "A. H." No. 26.

9.

She excepts to the allowance of the auditor of only $42.00 for water rent.

10.

She excepts to the auditor not allowing a credit to the defendants of the payment of the sewer taxes of December 10, 1896, amounting to $60.00.

11.

She excepts to the non-allowance by the auditor to the defendant of the money paid out for summons issued against the different tenants under the landlord and tenants act, which aggregate the sum of $40.00.

12.

She excepts to that part of the auditor's report which allows him but $3,300.00 for costs of construction of the four houses, to wit, 108 and 110 "F" street and 108 and 110 Madison alley, the costs of construction having been $4,000.00.

MARTHA McINTIRE.

ENOCH TOTTEN AND
FRANK T. BROWNING,
Sol'rs for Defendant Martha McIntire.

548 In the Court of Appeals of the District of Columbia, this 8th Day of January, A. D. 1897.

MARY C. PRYOR
vs.
EDWIN A. MCINTIRE. } No. 643.

It is hereby stipulated by and between the parties hereto, by their respective solicitors, that the word "not" shall be considered as inserted between the words "in" and "allowing," where they occur in the first line of the plaintiff's first exception to the auditor's report as the same is printed in the Record, at page 11, the said word having been omitted from the transcript by an error of the copyist.

FRANKLIN H. MACKEY,
Sol. for Appellant Pryor.
FRANK T. BROWNING,
Sol. for Def'd'ts.

[Endorsed:] No. 643. Mary C. Pryor, appellant, *vs.* Edwin A. McIntire *et al.* Stipulation of counsel. Court of Appeals, District of Columbia. Filed Jan. 8, 1897. Robert Willett, clerk.

549 *Plaintiff's Exceptions to Auditor's Report.*

Filed July 10, 1896.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
E. A. MCINTIRE *et al.* } In Equity. No. 12161.

The plaintiff excepts to the report of the auditor filed in this cause June 16th, 1896, in the following particulars:

1.

For that the auditor erred in allowing interest, with reasonable rests, on the rents shown to have been received by the defendants from the date of such receipt, whereas such allowance should have been made and the account so stated.

2.

For that the auditor erred in allowing the defendants the amount claimed to have been expended by Martha McIntire in erecting buildings upon the land of the plaintiff, it having been shown that said improvements were made in bad faith.

Wherefore the plaintiff prays that the said report be remanded to the auditor with directions to allow interest. with reasonable rests, as claimed in the first exception, and to disallow the amount allowed by him for the erection of said building, as set forth in the 2nd exception.

FRANKLIN H. MACKEY,
Attorney for Plaintiff.

Final Decree Affirming Auditor's Report.

Filed November 28, 1896.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
E. A. MCINTIRE and MARTHA MCINTIRE. } Equity. No. 12761.

This cause coming on to be heard upon the several exceptions of the complainant and defendants to the report of the auditor filed herein July 16, 1896, and the same having been argued by counsel for the respective parties and duly considered by the court, it is thereupon, this 28th day of November, A. D. 1896, by the court adjudged, ordered, and decreed that the said several exceptions of the complainant and the defendants be, and the same are hereby,
550 respectively overruled, and the said report is in all things hereby affirmed.

And it is further adjudged, ordered, and decreed that the complainant recover of the defendants the sum of one thousand six hundred and sixty-four dollars and ninety-three cents ($1,664.93), with interest thereon from the 1st day of July, A. D. 1896, together with costs, to be taxed by the clerk, and that she have execution therefor as at law.

And it is further adjudged, ordered, and decreed that the following deeds be, and the same are hereby, vacated and annulled so far as the same affect in any way the title of the complainant to the property described in these proceedings, to wit: All that part of lots twenty-one (21) and twenty-two (22), in square five hundred and sixty-nine (569), beginning for the same at a point on F street north distant nineteen (19) feet from the northeast corner of lot twenty (20), in said square, thence running east on the line of F street twenty-six (26) feet; thence south one hundred (100) feet to a twenty-foot alley; thence west along the line of said alley twenty-six (26) feet; thence north one hundred (100) feet to the place of beginning, together with the improvements, ways, easements, rights, hereditaments, and appurtenances to the same belonging or in anywise appertaining, to wit:

1. Deed of trust from Mary C. Pryor and Thomas Pryor, her husband, dated the 2nd day of May, A. D. 1880, executed by Mary C. Pryor and Thomas Pryor, her husband, to Edwin A. McIntire, trustee, and recorded May 28, A. D. 1880, in Liber 941, folio 449 *et seq.*, of the land records of the District of Columbia.

2. The unrecorded deed, dated the 3rd day of May, A. D. 1881, and purporting to be executed by Mary C. Pryor and Thomas Pryor, her husband, to Martha McIntire, and purporting to convey the property described in these proceedings.

3. The deed dated the 27th day of September, 1887, and purporting to be executed by Hartwell Jenison and wife to Martha McIntire, and recorded on the 4th day of October, 1887, in Liber 1287, folio 9, of said land records.

4. Deed in fee, dated the 19th day of April, A. D. 1882, purporting to be executed by Hartwell Jenison and wife to Emma Taylor, and recorded in Liber 1003, folio 188 *et seq.*, of said land records, recorded on the 21st day of April, 1882.

5. Deed of trust dated 29th day of June, A. D. 1881, purporting to be executed by Hartwell Jenison and wife to Edwin A. McIntire, trustee, recorded in Liber 971, folio 494, of said land records, on the 11th day of July, 1881.

6. Deed dated 28th day of June, 1881, executed by Edwin A. McIntire, trustee, to Hartwell Jenison, and recorded the 21st day of April, 1882, in Liber 1003, folio 187, of the said land records.

7. Deed dated the 31st day of May, A. D. 1884, purporting to be executed by Emma Taylor to Martha McIntire, and recorded October 14, A. D. 1886, in Liber 1210, folio 182 *et seq.*, of the said land records.

And it is further adjudged, ordered, and decreed that the
551 defendant Hartwell Jenison recover of the complainant, Mary C. Pryor, the sum of three hundred and fifty dollars, with

interest from the date of this decree, and that the said sum be and remain a lien upon the property of the complainant, Mary C. Pryor, until the same be satisfied.

And it is further adjudged, ordered, and decreed that the defendants deliver forthwith the possession of the said described parts of lots twenty-one and twenty-two, in square five hundred and sixty-nine, to the plaintiff.

A. B. HAGNER,
Asso. Justice.

And from this decree the defendants in open court pray an appeal to the Court of Appeals of the District of Columbia, which is allowed and the bond fixed in the penalty of five thousand ($5,000) dollars as a supersedeas.

And the plaintiff also prays a like appeal from so much of said decree as overrules her exceptions to the auditor's report, and the penalty of her appeal bond is fixed at two hundred dollars.

A. B. HAGNER,
Asso. Justice.

In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. MCINTIRE *et al.* } No. 12761. In Equity.

The President of the United States to Mary C. Pryor, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal taken in the supreme court of the District of Columbia on the 28th day of November, 1896, wherein Edwin A. McIntire and Martha McIntire are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 30th day of November, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 1st day of December, 1896.

FRANKLIN H. MACKEY,
Attorney for Appellant,
Per ROB'T.

552 In the Supreme Court of the District of Columbia.

MARY C. PRYOR
vs.
EDWIN A. McINTIRE and MARTHA McINTIRE. } No. 12761. In Equity.

The President of the United States to Edwin A. McIntire and Martha McIntire, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 28th day of November, 1896, wherein Mary C. Pryor is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 30 day of November, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 1st day of December, 1896.

FRANK T. BROWNING,
Per ——,
Sol. & Attorney for Appellee-.

Memorandum.

Dec. 3, '96.—Defendants' bond for appeal filed.
" 4, " —Complainant's " " "

Stipulation.

Filed December 14, 1896.

In the Supreme Court of the District of Columbia, December 12, 1896.

MARY C. PRYOR
vs.
EDWIN A. McINTIRE. } In Equity. No. 12761.

It is hereby stipulated by the parties to this cause, by their respective solicitors, that the following proceedings and no others shall constitute the transcript of the record on the cross-appeals of the parties hereto to the decree of the court affirming the auditor's report herein, to wit:

553 1. Order admitting mandate to be filed and referring cause to auditor.
2. Auditor's report.
3. Exceptions to auditor's report by E. A. McIntire.
4. Exceptions to auditor's report by Martha McIntire.
5. Exceptions to auditor's report by Mary C. Pryor.
6. Final decree affirming auditor's report.
7. Citation to complainant.
9. Citation to defendant.

And it is further stipulated that the printed record in the case of Pryor *vs.* McIntire, No. 465, now on file in the Court of Appeals, shall be a part of the record of the case and be referred to and read from on the hearing of the aforesaid respective appeals.

FRANKLIN H. MACKEY,
Sol'r for Pryor.
FRANK T. BROWNING,
Sol'r for Defendants.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 26, inclusive, are true copies of originals in cause No. 12761, equity, wherein Mary C. Pryor is complainant and Edwin A. McIntire *et al.* are defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 16th day of December, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 642: Edwin A. McIntire *et al.*, appellants, *vs.* Mary C. Pryor; and No. 643: Mary C. Pryor, appellant, *vs.* Edwin A. McIntire *et al.* Court of Appeals, District of Columbia. Filed Dec. 23, 1896. Robert Willett, clerk.

554 TUESDAY, *January 5th, A. D.* 1897.

EDWIN A. MCINTIRE *et al.*, Appellants,
vs.
MARY C. PRYOR,
} No. 642.

and

January Term, 1897.

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE *et al.*
} No. 643.

Order as to Transcript of Record.

Cross-appeals in Pryor *v.* McIntire *et al.*

(Equity cause No. 12671, supreme court D. C.)

On the stipulation of the parties to the above-entitled cause, it is, this 5th day of January, 1897, ordered that the transcript of the record sent up to this court by the supreme court of the District of Columbia in this cause and upon which the former appeal therein was heard shall stand for, and it is hereby made a part of, the record in said cause and shall be taken and used as such with the same force and effect as if it had been again copied and sent up to this court by the said supreme court; and said transcript, together with the transcript sent up to this court by said supreme court of the records and proceedings in said cause in said supreme court since the sending down of the mandate by this court in said cause on the first appeal, shall stand for and is hereby made the transcript of the record in said cause for the hearing of the appeals and each of them with the same force and effect as if a transcript of the entire record now in said supreme court had been sent up in said cause on these appeals therein. It is further ordered that the printed record in the former appeal shall be sufficient and shall stand for that part of the transcript on the hearing of the cause on the present appeals or either of them.

By the court:

R. H. ALVEY,
Ch. Justice.

555 TUESDAY, *February 16th, A. D.* 1897.

EDWIN A. MCINTIRE and MARTHA MCINTIRE, Appellants,
vs.
MARY C. PRYOR,
} No. 642.

and

MARY C. PRYOR, Appellant,
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE.
} No. 643.

The argument in the above-entitled causes was commenced by Mr. F. T. Browning, attorney for Edwin A. McIntire and Martha

McIntire, appellants in No. 642 and appellees in No. 643, and was continued by Messrs. F. H. Mackey and H. O. Claughton, attorneys for Mary C. Pryor, appellee in No. 642 and appellant in No. 643, and was concluded by Mr. F. T. Browning, attorney for Edwin A. McIntire and Martha McIntire, appellants in No. 642 and appellees in No. 643.

556 EDWIN A. McINTIRE and MARTHA McINTIRE, Appellants, *vs.* MARY C. PRYOR. } No. 642.

MARY C. PRYOR, Appellant, *vs.* EDWIN A. McINTIRE and MARTHA McINTIRE. } No. 643.

Mr. Justice MORRIS delivered the opinion of the court:

These are cross-appeals in the same suit from a decree of the supreme court of the District of Columbia confirming a report of the auditor of that court.

The cause was formerly before us on an appeal from a decree dismissing the bill of complaint. That decree was reversed and the cause remanded, "with direction to take an account of the indebtedness remaining due by the complainant to Hartwell Jenison, together with an account of the reasonable value of the rents and revenues collected by the defendants since May 4, 1881, or that should have been received by them, as well as of all moneys that have been expended by them or either of them in the payment of taxes and all other proper charges on said premises." And it was provided farther in the decree of this court that "upon the coming in of such report a final decree will be passed annulling each and all of the several trust deeds and conveyances that cloud the title to said premises, and awarding possession thereof to plaintiff upon her paying within a reasonable time whatever sums may be found to be actually due, first, to said Hartwell Jenison, and then to the defendant Martha McIntire, upon the settlement of the account aforesaid." See 7 D. C. App., 417, 434.

The cause thereupon was referred by the supreme court of the District to its auditor for the purpose of the statement of the required account, and that officer, after having taken testi-
557 mony and having also considered the testimony taken previously in the cause, stated an account, in which he found the sum of $350 due to Hartwell Jenison, without interest, which Jenison declined to claim, and the sum of $1,664.93 as a balance due to the complainant from the defendant Martha McIntire or from herself and her codefendant on account of the rents and revenues received by them from the property in controversy, after the allowance to them of certain taxes and other legal charges which they had paid, and also the sum of $3,300 shown to have been expended by them in the construction of four houses upon the property on or before March 1, 1887.

The statement of Jenison's claim is accepted by all the parties, and no one questions its justice. But — the remainder of the auditor's report both parties to the cause filed exceptions.

Each of the defendants, Edwin A. McIntire and Martha McIntire, filed twelve exceptions, being the same, however, in both cases. Three of these exceptions are of a general character, one of them being directed against any charge whatever of rent, and the other two having reference to the charge of rents against Edwin A. McIntire after the property had been conveyed to Martha McIntire and improved by her. The other exceptions all go to the allowance or refusal of various specified items.

The complainant also excepted to the auditor's report, first, because the defendants had not been charged interest on the rents received by them, and, secondly, because Martha McIntire had been allowed the amount expended by her in the construction of buildings upon the premises in controversy.

The court below overruled all the exceptions and rendered a decree in favor of the complainant for the recovery by the latter against the defendants of the sum of $1,664.93, and costs; vacated the deeds of conveyance that had been required to be vacated; adjudged that Hartwell Jenison was entitled to recover from the complainant the sum of $350, with interest from the date of the decree, which sum it decreed to be a lien upon the property
558 until it was satisfied, and that the defendants should forthwith deliver possession of the property in controversy.

From this decree affirming and ratifying the auditor's report and in other respects carrying into effect the decision of this court the parties on both sides have appealed to this court.

The defendants, the McIntires, have assigned for error: 1st, that the court below erred in vacating and annulling the various deeds affecting the real estate involved in this case and mentioned and described in the pleadings, proceedings, and decree herein; 2d, that the court below erred in charging the defendants with the full amount of rents collected by them from the property as improved after it went out of the possession of Mary C. Pryor and into the possession of the defendant Martha McIntire. There is no assignment of error based upon the allowance or disallowance of the various items mentioned in the exceptions filed by the defendants, and it is presumed that these exceptions have been abandoned. They could not be sustained in any event, as there is nothing whatever in the record to show that the auditor was not right in his action in regard to them. His finding thereon must be accepted as conclusive.

The complainant has two assignments of error, following closely the two exceptions filed by her to the auditor's report:

1. The assignments of error on behalf of the defendants in the cause are scarcely intended to be considered by us here. They go to the correctness of our original decision in the case, which we find no reason to question, and the purpose of the assignments is merely to save the rights of the defendants as far as possible in any further review that may be had of the case. It is not questioned—indeed,

it is expressly admitted in the brief submitted on behalf of the defendants—that if an accounting was proper in the case the accounting itself is correct. The position of the defendants is that no accounting should have been required of them.

As an inducement, however, to a rehearing or review of our decision on the former appeal, the case of *Willard vs. Wood*,
559 decided by the Supreme Court of the United States at its present term and which was taken thereto by appeal from this court, is pressed upon our attention; but the decision of the Supreme Court in that case is in affirmance of the previous decision therein of this court, and we find nothing therein inconsistent with our decision in the present case.

2. Upon this appeal we are called upon only to consider the complainant's two assignments of error, and of these it is expedient to consider the second assignment first, inasmuch as the decision thereon will have an important bearing on the first assignment.

The contention here on behalf of the complainant is that the defendants were occupants in bad faith of the property in controversy, and that only occupants in good faith can be allowed compensation for improvements made by them, and they only to the extent of the rents collected by them and no more, and the case of *Green vs. Biddle* (8 Wheaton, 1) and other authorities are cited in support of the proposition; but it seems to us that in its application to the present case and under the peculiar circumstances of the case the proposition cannot be sustained.

Statutes have been enacted in several States of our Union—perhaps in the larger number of them—incorporating into their political and judicial system the provision of the Roman civil law that no one should be enriched to the injury of another, and that therefore to an occupant of land under a title which proves to be defective and who has in good faith placed valuable improvements thereon, enhancing the value of the property, compensation should be allowed, even as against the true owner, when he has been evicted by the latter, and this compensation it has been sought to allow by giving such occupant a lien or charge upon the premises recovered or by permitting him in certain contingencies to purchace the property, and the constitutionality of such statutes has been generally sustained. (*Fee vs. Cowdry*, 45 Ark., 413; *Ross vs. Irving*, 14
Ill., 171; *Griswold vs. Bragg*, 48 Conn., 577; *Whitney vs. Rich-*
560 *ardson*, 31 Vt., 306; *Plaquette vs. Pickness*, 19 Wisc., 219; *Huelschman vs. McHenry*, 29 Wisc., 655; *Childs vs. Shower*, 18 Iowa, 261; 10 Amer. & Eng. Encyclop. of Law—title, *improvements; Leighton vs. Young*, 18 L. R. A., 266, 271.)

One such statute, however, an act of the legislature of the State of Kentucky, was brought into question in the case of *Green vs. Biddle, supra*, in the Supreme Court of the United States as early as the year 1823, and was held to be unconstitutional and void as being in violation of the compact between the State of Virginia and the State of Kentucky, contained in the act of the legislature of Virginia of the 18th of December, 1789, and incorporated in the constitution of Kentucky. But it is not apparent that, in the absence of such a

compact, the act would have been held unconstitutional; and later decisions, as we have seen, affirm the validity of such legislation.

But the case of *Green vs. Biddle* is important for its statement of the doctrine of the common law and of equity, as well as that of the civil law, on the subject of compensation for improvements made by an occupant upon property from which he is afterwards evicted.

At common law, it is said, "a right to land includes the right to enter on it, when the possession is withheld from the right owner, to recover the possession by suit, to retain the possession, and to receive the rents and profits arising from it." And the court adds: "We are not aware of any common-law case which recognizes the distinction between a *bona fide* possessor and one who holds *mala fide* in relation to the subject of rents and profits."

But the doctrine of equity is somewhat different. "Equity allows an account of rents and profits in all cases from the time that the title accrued, provided that — do not exceed six years, unless under special circumstances, as where the defendant had no notice of the plaintiff's title, nor had the deeds and writings in his custody in which the plaintiff's title appeared, or where there has been laches in the plaintiff in not asserting his title, or where the plaintiff's title appeared by deeds in a stranger's custody; in all which cases,
561 and others similar to them in principle, the account is confined to the time of filing the bill." This is the English chancery rule, as stated in 1 Madd. Ch., 72, and in *Domer vs. Fortescue* (3 Atk., 128) by Lord Hardwicke.

The exception to the rule is as well established as the rule itself. In the early case of *Southall vs. McKean* (1 Wash., 336) it was said: "If the equitable owner of land, who is conusant of his right to it, will stand by and see another occupy and improve the property, without asserting his right to it, he shall not in equity enrich himself by the loss of another, which it was in his power to have prevented, but must be satisfied to recover the value of the land independent of the improvements."

By Mr. Justice Story, in his Equity Jurisprudence, the doctrine of equity on this point is stated as follows:

"If a plaintiff in equity seeks the aid of the court to enforce his title against an innocent person who has made improvements upon land supposing himself to be the absolute owner, that aid will be given to him only upon the terms that he shall make due compensation to such innocent person to the extent of the benefits which will be received from those improvements" (sec. 799*a*). And again: "Where a party lawfully in possession under a defective title has made permanent improvements, if relief is asked in equity by the true owner he will be compelled to allow for such improvements" (sec. 1237). And in the note to the latter section it is said, citing the case of *Bright vs. Boyd* (1 Story, 478): "In cases where the true owner of the estate, after a recovery thereof at law from a *bona fide* possessor for a valuable consideration without notice, seeks an account in equity as plaintiff against such possessor for the rents and profits, it is the constant habit of courts of equity to allow such possessor, as defendant, to deduct therefrom the full amount of all

the meliorations and improvements which he has beneficially made upon the estate, and thus to recoup them from the rents and profits. 2 Story on Eq. Jurispr., sects. 799*a*, 799*b*, 1237, 1238, 1239;
562 *Green vs. Biddle*, 8 Wheat., 77–81. So if the true owner of an estate holds only an equitable title thereto and seeks the aid of a court of equity to enforce that title, the court will administer the aid only upon the terms of making compensation to such *bona fide* possessor for the amount of his meliorations and improvements of the estate beneficial to the true owner. See also 2 Story Eq. Jur., section 799*b* and note; *idem*, sec. 1237, 1238. In each of these cases the court acts upon an old and established maxim in its jurisprudence that he who seeks equity must do equity."

In the case of *Williams vs. Gibbs* (20 How., 535) this doctrine was fully indorsed and applied, with terms of commendation for the more liberal doctrine of the civil law. So, also, in the case of *Putnam vs. Ritchie*, 6 Paige, 390. And in the more recent case of *Canal Bank vs. Hudson* (111 U. S., 66, 83) the Supreme Court of the United States, by Mr. Justice Blatchford, to some extent modifying the rule laid down in *Green vs. Biddle*, announced the rule of equity broadly to be this: "Where a party lawfully in possession under a defective title makes permanent improvements, if relief is asked in equity by the true owner, he will be compelled to allow for such improvements." And the opinion cites in support of the rule 2 Story's Eq. Jur., sec. 1237, note 1; *Bright vs. Boyd*, 1 Story, 478, and 2 *id.*, 605; *Putnam vs. Ritchie*, 6 Paige, 390; *Williams vs. Gibbs*, 20 How., 535.

There can be no question, therefore, now as to the true rule of equity for the allowance of compensation for improvements placed upon land in good faith by an occupant, who is afterwards evicted, when such compensation is sought merely as an offset to a claim of the true owner for the rents and profits during the period of the wrongful occupancy; and we do not understand that this rule is controverted by the complainant in the present case. The claim is that the defendants, having procured the conveyance of the land to them by fraud, were not occ-pants in good faith in the purview of the rule, and are not, therefore, entitled to compensation.

It must be confessed that the authorities leave unsettled
563 the question what constitutes good faith in such cases, and it is probably difficult, if not impossible, to lay down any general definition of it, just as it has been found impossible, and inexpedient even if possible, to define what constitutes fraud. It would seem that each case must be governed by its own circumstances. A mere trespasser, of course, is not entitled to compensation for improvements put by him upon land; there must be some color of title or pretense of ownership (*Green vs. Biddle*, 8 Wheaton, 1; *O'Mulcahy vs. Florer*, 27 Minn., 449; *Matthews vs. Davis*, 6 Humph., 324). The rule as stated by Mr. Justice Blatchford for the Supreme Court in *Canal Bank vs. Hudson*, *supra*, would seem to be more definite than that which would remit us to an inquiry of good faith, and is applicable to the present case. There it is said that compensation should be allowed to a party "*lawfully in possession under a defective title.*"

Now, in the strict sense, there cannot be any lawful possession by any one under any circumstances as against a true owner. There cannot be two antagonistic rights to the same specific property. Right, like truth, is necessarily one and indivisible. Any possession antagonistic to that of the true owner must be founded on wrong. In the contemplation, therefore, of this rule, and of the principles of equity applicable to such cases, it is not every wrong that constitutes bad faith that would exclude one from the protection of a court of equity. On the contrary, title founded upon wrong may ripen into absolute legal right, and may even become an absolutely equitable right. It must be, then, that the lawful possession here mentioned must be possession according to the forms of law, but liable to be disturbed and displaced by the assertion of antagonistic equitable right.

The defendants in this cause had in themselves not merely a defective title, but a perfect legal title. They were the absolute owners of the property, both legally and equitably, as against all the world, except the complainant. They were such owners by
564 the very act of the complainant. She had parted with her legal title to them and had put them in possession, and there is no doubt that they believed that they had acquired good title to the property. It is true that all this had been accomplished by a gross fraud upon the complainant, which she was entitled to have redressed in a court of equity; but the transaction was voidable, not void, and it was for the complainant alone to avoid it. She seems to have been in no great haste to avoid it, and although we have held that she was not guilty of laches in such manner or to such extent as to preclude her from redress in equity, yet we must also hold that her delay in the assertion of her equitable right was such as to give sanction to the improvement of the property by the defendants. The improvements were not made until about seven years after the complainant had parted with the title to the property and the defendants had become seized of it, and it was three years after that before the present suit was instituted. It is claimed that she made some protest against the construction of the improvements in question, but the proof on that point is rather vague. She is, it is true, a poor ignorant colored woman, unacquainted with her rights under the law, and equally unacquainted with the law's requirements, and the consideration of that fact was potent in our determination of the fraud that was practiced upon her; but we are not justified by any such consideration in sanctioning the punishment of the defendants by the confiscation of that which they placed upon the land when they were the apparent owners under an apparently good record title, and which it is not controverted beneficently enhances the value of the property to the full extent of the value of such improvements. It does not seem to us to be a case proper for such punishment of the defendants.

There is another consideration which should not be ignored. The rents and profits with which the defendants are charged are for the most part such as have accrued by sole reason of the im-

565 provements made by them. It would be most inequitable to charge them, not merely with the rents and profits of that which they had wrongfully and fraudulently taken from the complainant, but likewise of that which they themselves had created upon the property (*Adkins vs. Hudson*, 19 Ind., 392). If it were proper to reject the claim of the defendants for compensation for their improvements, it would be only the dictate of reason and justice that they should not be held liable to the complainant for the profits derived by them from those improvements alone. This would leave them chargeable only with a fair rental value for the land and premises independently of the improvements, and it is not apparent that this would lead to any substantially different result from that of the method of accounting which has been adopted.

We do not think that it was error for the auditor of for the court below to have allowed to the defendants the value of the improvements which they put upon the property in controversy.

3. There remains the complainant's first assignment of error, based upon the auditor's failure to allow her interest on the rents as received by the defendants.

Undoubtedly the account is not stated in precise accordance with the rule laid down by the Supreme Court of the United States in the case of *Story vs. Livingston* (13 Pet., 359) and in the case of *New Orleans vs. Gaines* (15 Wall., 624, 632). Says the Supreme Court in the former case: "The correct rule as to interest is that the creditor shall calculate interest whenever a payment is made, and to this interest the payment is to be applied, and if it exceeds the interest due the balance is to be applied to diminish the principal, and this rule applies whether the debt be one which expressly draws interest or one in which the interest is given as damages;" and, of course, the rule applies as well to mutual accounts set off against each other as to those where the payments are all on one side.

Tested by this rule, the auditor's statement is not correct, for he declined to allow interest to either party when both were
566 entitled to it; but it may well be questioned whether the parties to the proceeding adduced before that officer the proper data on which to calculate interest. The testimony before him, if we may judge from his report, was extremely vague and meagre; perhaps it was the best that could be had; but evidently he was compelled to grope his way in darkness; but when we hold, as we have held, that it was proper for the auditor to allow to the defendants the sum of $3,300 as the value of their improvements, and when it is considered that under the rule just cited this sum is entitled to bear interest as against the claim of the complainant, it is not apparent that any injury has been done to the latter by the mode of computation here adopted by the auditor. The result of an exact application of the rule would be to diminish the balance due to the complainant; and the error, if error there be under the circumstances, is one that prejudices only the defendants; but the defendants do not complain of this. On the contrary, with a reservation of a denial of any liability whatever on their part for an

accounting, they admit in their brief that the accounting is correct, if they are liable at all. It is settled that an error which does not prejudice the party complaining of it is not good ground for reversal. (*Lancaster vs. Collins*, 115 U. S., 222.)

The complainant's first assignment of error, as well as the second, we must regard as untenable.

From what we have said it follows that the decree of the supreme court of the District of Columbia here appealed from must be affirmed, and, as both parties have appealed, it is proper that each one should pay his or her own costs on appeal.

And it is so ordered.

567 TUESDAY, *March 2d, A. D.* 1897.

EDWIN A. MCINTIRE and MARTHA MCINTIRE, Appellants, *vs.* MARY C. PRYOR, } No. 642.

and January Term, 1897.

MARY C. PRYOR, Appellant, *vs.* EDWIN A. MCINTIRE and MARTHA MCINTIRE. } No. 643.

Appeals from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia on appeal and cross-appeal and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed; each party to pay their own costs on appeal.

Per MR. JUSTICE MORRIS.

March 2, 1897.

568 Court of Appeals of the District of Columbia.

EDWIN A. MCINTIRE and MARTHA MCINTIRE, Appellants, *vs.* MARY C. PRYOR. } No. 642.

And now comes the above-named appellants and appeal to the Supreme Court of the United States from the decree of this court in the above-entitled cause against them, which decree bears date March 2d, 1897.

ENOCH TOTTEN,
Att'y for E. A. & Martha McIntire.

Appeal allowed to Supreme Court of the United States and amount of bond to act as a supersedeas fixed at five thousand dollars ($5,000).

M. F. MORRIS,
Associate Justice.

Endorsed: No. 642. Court of Appeals of the District of Columbia. Appeal of appellants E. A. and Martha McIntire to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Mar. 19, 1897. Robert Willett, clerk.

MONDAY, *April 5th, A. D.* 1897.

EDWIN A. McINTIRE and MARTHA McINTIRE, Appellants,
vs.
MARY C. PRYOR. } No. 642.

Upon hearing the appellee's motion to enlarge the supersedeas bond on appeal to the Supreme Court of the United States, it is considered that said motion be, and the same is hereby, granted, and that the amount of the bond is fixed at the sum of ten thousand dollars.

569 Know all men by these presents that we, Edwin A. McIntire and Martha McIntire, as principals, and Emma T. McIntire, as surety, are held and firmly bound unto Mary C. Pryor in the full and just sum of ten thousand dollars, to be paid to the said Mary C. Pryor, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of April, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Mary C. Pryor, appellee, and Edwin A. McIntire and Martha McIntire, appellants, a decree was rendered against the said Edwin A. McIntire and Martha McIntire, and the said Edwin A. McIntire and Martha McIntire having appealed to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Mary C. Pryor, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Edwin A. McIntire and Martha McIntire shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWIN A. McINTIRE. [SEAL.]
MARTHA McINTIRE. [SEAL.]
EMMA T. McINTIRE. [SEAL.]

Sealed and delivered in the presence of—
L. F. MAY.
E. W. McINTIRE.

Satisfactory.
F. H. M.

Approved by—
M. F. MORRIS,
Associate Justice.

[Endorsed:] No. 642. Edwin A. McIntire and Martha McIntire *vs.* Mary C. Pryor. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed April 6, 1897. Robert Willett, clerk.

570 UNITED STATES OF AMERICA, *ss:*

To Mary C. Pryor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Edwin A. McIntire and Martha McIntire are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. F. Morris, associate justice of the Court of Appeals of the District of Columbia, this 6th day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

Service acknowledged April 6th, 1897.
FRANKLIN H. MACKEY,
Sol. for Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 6, 1897. Robert Willett, clerk.

571 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 570, inclusive, contain a true copy of the transcript of the record and proceedings of said Court of Appeals in the cases of Mary C. Pryor, appellant, *vs.* Edwin A. McIntire and Martha McIntire, and Edwin A. McIntire and Martha McIntire, appellants, *vs.* Mary C. Pryor, being Nos. 465 and 642, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 1st day of May, A. D. 1897.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,586. District of Columbia Court of Appeals. Term No., 373. Edwin A. McIntire and Martha McIntire, appellants, *vs.* Mary C. Pryor. Filed May 8th, 1897.

572 In the Court of Appeals of the District of Columbia.

ELIZA BROWN, Appellant,
vs.
EDWIN A. MCINTIRE & MARTHA MCINTIRE. } No. 466.

In the Supreme Court of the District of Columbia.

ELIZABETH BROWN, Complainant,
vs.
EDWIN A. MCINTIRE and EMMA TAYLOR. } Equity. No. 12977.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Original bill filed February 7th, 1891.

Original Bill.

Filed Feb. 7th, 1891.

In the Supreme Court of the District of Columbia.

ELIZABETH BROWN
vs.
EDWIN A. MCINTIRE and EMMA TAYLOR. } Equity. No. 12977, Doc. 31.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant states as follows:

1. The complainant and defendants, except Emma Taylor, are citizens of the District of Columbia.

2. The complainant sues in her own right as sole heir-at-law of her mother, Barbara Brown, deceased. The defendant Edwin A. McIntire is sued in his own right and as trustee under the deed of trust hereinafter mentioned.

3. Complainant avers from information and belief that there is not now and never has existed any such person as Emma Taylor described in the deed hereinafter mentioned. From such information and belief complainant avers that the said name is fictitious, and was adopted and used by the said defendant, McIntire, under the circumstances hereinafter stated for the purpose of cloak-
573 ing and concealing his fraudulent acts as hereinafter set forth. Complainant has, however, inserted her name as one of the defendants to this suit for purposes of precaution merely, so that if there be in existence any such person she may enter or caused to be entered her appearance herein to make such answer as she may be advised.

4. That on the 8th day of June, 1880, the complainant's mother,

Barbara Brown, deceased, being well seized and possessed of lot thirty-six (36), in Leonard Simmermacher's subdivision of original lot five (5), in square 1002, in the city of Washington, in the District of Columbia, executed to said McIntire a certain deed of trust whereby she conveyed to him (to hold as trustee) the said described premises to secure a certain promissory — of even date therewith for five hundred dollars ($500), executed by her to one Richard R. Brouner, the said note being payable in two (2) years from the date thereof, with interest at ten per cent. per annum until paid. The said deed of trust is recorded in Liber 944, folio 75, of the land records of said District, and said deed so recorded is made part hereof.

5. That on the — day of April, 1881, the said McIntire, claiming to proceed under the power vested in him by said trust, exposed the said property for sale at an alleged public auction and caused the same to be knocked down to a fictitious bidder, under the name of Emma Taylor, of Philadelphia, Pennsylvania, at and for the sum of four hundred dollars, and thereafter, on the first day of April, 1881, executed a deed in fee of said premises, in which was inserted said fictitious name as the grantee. The said deed is recorded in Liber 967, folio 180, of said land records, and is made a part hereof.

6. That the said sale and the said deed thereafter executed was a fraud upon said Barbara Brown, perpetrated by said McIntire for the purpose of getting the control and possession of said property under the name aforesaid, and that he was in reality the bidder for and purchaser of said property, and that he has ever since appropriated the rents, issues, and profits thereof to his own use.

7. That while complainant is informed and believes that there is not now and never was such a person in existence as the said Emma Taylor described in said deed, complainant nevertheless avers on information and belief that even if there be such person she was not present at said sale and never authorized the said McIntire to bid for her or to purchase the same; that she paid no consideration for said conveyance, and that the deed has never been delivered to her and she has never made any claim of title to said property, but, on the contrary, her name was fraudulently used without her knowledge or consent by said McIntire for the purpose of obtaining the said property for himself, and that he paid from his own means whatever was paid to the holder of the note held and secured by the said trust, and has ever since controlled said property and received to his own use the rents and profits thereof.

8. That said Barbara Brown departed this life shortly after said sale wholly ignorant of the fraud perpetrated upon her, and complainant has only within the past weeks discovered the facts
574 hereinbefore set forth as to the said fraudulent sale and the deed executed in pursuance thereof.

9. Complainant does not know and therefore does not allege that the said Brouner had any knowledge of or was any party to the said fraudulent transaction, but she prays that she may have the benefit of any facts which may be hereafter developed in respect of said matter.

10. Nor does she know how much, if anything, is due the said Brouner or whoever may be the holder of the note described in said deed of trust, but she herewith tenders herself ready to pay whatever may be justly due thereon.

11. The said Barbara Brown departed this life intestate on the 24th day of February, 1883, leaving complainant as her only surviving child and heir-at-law.

The premises considered, complainant prays—

1. That the said defendants, Edwin A. McIntire and Emma Taylor (if there be any such person), may be required to appear and answer the exigency of this bill of complaint.

2. That the said deed to Emma Taylor be declared fraudulent and void, and that the defendant McIntire be directed to deliver up the same to be cancelled.

3. That an account may be taken of what is due of the debt secured by said deed of trust, if anything, and that upon the payment thereof by complainant the defendant McIntire be directed to execute a release of said deed of trust.

4. That an account may be also taken of the rents and profits received by said McIntire from said real estate, and that complainant may have a personal decree against him for whatever may be found due.

5. That complainant may have such further and other relief as the nature of the case may require.

FRANKLIN H. MACKEY,
W. W. BOARMAN,
Sols. for Complainant.

The defendants to this bill are Richard R. Brouner, Edwin A. McIntire, and Emma Taylor.

Answer.

Filed April 7, 1891. R. J. Meigs, Clerk.

* * * * * * *

Answer of Edwin A. McIntire, one of the defendants in the above-entitled cause.

1, 2. I do not admit that the complainant is of the age of 21 years, nor do I believe she is a citizen of the District of Columbia, nor do I know that Barbara Brown is deceased, and if she is deceased I do not know if complainant is the sole heir, as alleged. I therefore deny all of said allegations.

3. I deny the allegations made in the 3 paragraph of the bill.

575 4. I admit that on the 8th day of June, 1880, Barbara Brown executed a deed of trust to me, as trustee of the property named, to secure the payment of the sum of $400 and not $500, as alleged.

5. I acknowledge that the property was sold at a public sale by virtue of the deed of trust mentioned in the preceding paragraph,

and that the same was sold for $400 and a deed made to the purchaser. I deny there was any fictitious bidder or bidding or fictitious name used in my deed as trustee, or that anything fraudulent, dishonorable, or even unusual occurred at the sale or in connection therewith.

6. I deny that said sale and said deed was a fraud upon Barbara Brown or that she ever was dissatisfied with my transactions. I deny the allegations that I was the bidder and purchaser and that I have since appropriated the rents, issues, and profits or any portion of them to my own use.

7. I deny all and every one of the allegations made in the 7th paragraph of the bill.

8, 9, 10, 11. I deny all charges of fraud or fraudulent sale or fraudulent deed.

I do not know of my own knowledge whether Barbara Brown is now living or dead, nor do I know how many children she had. I do know, however, that all my transactions with regard to the negotiation of the loan and the sale and transfer of the property, &c., were made with the full knowledge of Barbara Brown and her attorney (Mr. S. A. Peugh, att'y-at-law), who knew not only that I treated her fairly, but that I charged her no trustee commission and had the auctioneer reduce his fee, and that I subsequently aided her pecuniarily when she was in need of help. I also know that said Barbara Brown and Emma Taylor made a deed of the above-named premises to Martha McIntire in consideration of the surrender to said Barbara Brown of her $400 note upon which a balance of interest was due, and said deed bears date the 25 day of April, A. D. 1881, was duly witnessed by her said attorney and two other witnesses, and was left for record in the office of the recorder of deeds April 7, 1891, and the said Martha McIntire is the owner of the property in good faith and has been for years receiving all the rents and profits thereof, as well as paying the taxes and bills for improvements and repairs.

And, further answering the complainant's bill, this defendant says that he is informed and so charges that this suit was not authorized by the complainant named in the bill, but it was filed by the solicitors whose names are signed to it, at their own instance and without the authority of the complainant.

EDWIN A. McINTIRE.

S. S. HENKLE, *Counsel.*

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

EDWIN A. McINTIRE.

576 Sworn to before me April 7, 1891.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

Memorandum.

1891, April 18.—Petition for leave to amend bill filed.

Memorandum.

1891, April 18.—Order granting leave to amend.

Amendment of Bill. Filed April 18, 1891.

In the Supreme Court of the District of Columbia.

ELIZABETH BROWN
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE, and EMMA TAYLOR. } Equity. No. 12977.

The complainant hereby, by leave of court first had and obtained, amends her original bill of complaint as follows:

1. By adding as a defendant to said bill Martha McIntire.

2. By striking out all of said bill after the 11th paragraph thereof and inserting the following:

12. That on the 7th day of April, 1891, the day of the filing of the answer of the defendant E. A. McIntire to the original bill in this cause, there was filed for record in the office of the recorder of deeds for this District two alleged deeds, the first of which is dated April 25th, 1881, and purports to be executed by said Barbara Brown and said Emma Taylor to said Martha McIntire, who is a sister of said E. A. McIntire, and the second, purporting to be executed by said Emma Taylor to Martha McIntire, being dated September 6th, 1884; that the defendant Martha McIntire claims the fee-simple to said property under and by virtue of said alleged deeds; that complainant did not know of the existence of said alleged deeds until the filing of the answer of said E. A. McIntire to the original bill herein and therefore did not make the said Martha a party to said original bill.

13. Complainant states, however, that the second of said alleged deeds, viz, that of Sept. 6th, 1884, is a nullity on its face, designating no property by any sufficient description, and therefore could not, if for no other reason, pass to said Martha McIntire a title to complainant's property; but complainant avers that both of said alleged deeds, even if the said second deed be not void for the reason just stated, are wholly and utterly void on the ground of fraud, both being fraudulent and forged instruments written by or at the instigation of defendant E. A. McIntire for the purpose, as complainant is informed and believes, of apparently placing the title to said property in the said Martha McIntire, while the said E. A.
577 McIntire should continue to enjoy the beneficial use of said property and receive the rents, issues, and profits thereof.

14. Complainant further states on information and belief that the said Martha McIntire paid no consideration for the execution of either of said alleged deeds, and that the considerations therein

alleged to have been paid are false and fraudulent recitals, and that she had, if not actual, at least full constructive notice and knowledge of the aforesaid fraud in the alleged execution of said alleged deed and would not be a *bona fide* purchaser without notice, even if the alleged Emma Taylor was not a fictitious person and she, the said Martha, had paid to her brother the consideration mentioned in said alleged deeds.

15. Complainant therefore avers that she is entitled in a court of equity to have the said alleged deeds to Emma Taylor of the 1st of April, 1881, and 25th of April, 1881, and the said alleged deed to Martha McIntire of September 6th, 1884, declared fraudulent and void and to be reinstated in her title to said property, and that she is entitled to an account from the said E. A. and Martha McIntire of the rents, issues, and profits of the said property received by them or either of them since the first day of April, 1881.

Wherefore complainant prays—

1. That the defendants be required to answer this amended bill, but without oath, the complainant hereby expressly waiving such oaths, and particularly that the defendant- E. A. McIntire and Martha McIntire make full, true, and explicit answers to the following interrogatories, but without oath, the complainant hereby expressly waiving such oath:

Int. 1. Who is the Emma Taylor described in the deeds mentioned in the bill of April 1st, 1881, and April 25th, 1881, and September 6th, 1884?

Int. 2. Was she ever in the District of Columbia at any time, to the knowledge of either of you? And, if so, give the dates of such times and state how long she remained here, to the knowledge of either of you.

Int. 3. At what house or hotel did she live while here? Give street and number.

Int. 4. Where was her residence in Philadelphia, if she ever resided there? Give street and number and date of her residence there.

Int. 5. Where is she now and when was the last time you ever heard of her and from whom?

Int. 6. Do you or either of you know of any person in the city of Philadelphia outside of your immediate family who ever knew her or ever conversed with her or ever saw her to know her? If so, give their names and addresses.

Int. 7. Have you or either of you any letters written by her or signed by her; if so, will you file with the answer to this amended bill any of such letters with the postmarked envelopes as evidence of what you claim to be her handwriting?

Int. 8. Did you or either of you ever remit to her or pay directly to her any money by check or otherwise; and, if so, will you
578 please produce and file with your answers her or any of her receipts therefor or the check or checks with her indorsement thereon so that the same may be taken as evidence of what you claim to be her handwriting?

Int. 9. How did you, Martha McIntire, pay to said Emma Taylor

the $1,800 mentioned in the deed of September 6th, 1884? Was it by check or in cash, and, if by check, upon what bank was said check drawn? If it was not paid directly by you to Emma Taylor, through whom was it paid and in what manner?

Int. 9½. How was the purchase-money mentioned in the deed of April 1st, 1881, paid to you, E. A. McIntire, and what did you do with it?

Int. 10. Have each of you, as far as you can, answered fully and in detail the foregoing interrogatories?

Int. 11. Are there any other facts which you or either of you have within your knowledge, information, and belief which will tend to disprove the charge made in the bill that the said Emma Taylor is a myth and a fiction? If so, state fully and in detail.

The said defendant-, Edwin A. McIntire and Martha McIntire, will answer separately each of said interrogatories as far as it is in their power so to do.

2. That the said alleged deeds of April 1st, 1881, and April 25th, 1881, and September 6th, 1884, as described in the bill be declared fraudulent, null, and void.

3. That an account may be taken of what is due from the defendants, E. A. McIntire and Martha McIntire, to complainant for the rents and profits received by them or either of them of said described property since the 1st day of April, 1881.

4. That an account may be taken of what is due of the debt secured by said deed of trust of June 8th, 1880, if anything, and upon the payment thereof by complainant to the holder of said note (whom it is prayed may be made a party hereto when found) the defendant McIntire be directed to execute a release of said trust.

5. That complainant may have such other and further relief as to the court may seem just and proper.

The defendants to this bill of complaint are E. A. McIntire, Martha McIntire, and said alleged Emma Taylor.

FRANKLIN H. MACKEY,
WM. W. BOARMAN,
Sol. for Compl't.

579 *Amendment to Amended Bill.*

Filed May 26, 1891.

In the Supreme Court of the District of Columbia.

ELIZABETH BROWN
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE, and EMMA TAYLOR. } Equity. No. 12977.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant, by leave of court first had and obtained, amends the amended bill by striking out the 5, 6, 7, and 8th paragraphs and inserting the following paragraphs in lieu thereof:

5. That the said McIntire, claiming to have proceeded under the power vested in him by said trust, and to have exposed the said property for sale at an alleged public auction, and to have caused the same to be knocked down to one Emma Taylor, of Philadelphia, Pennsylvania, at and for the sum of four hundred dollars ($400), thereafter, on the 1st day of April, 1881, executed an alleged deed in fee of said premises, in which was inserted the name of said Taylor as the grantee. The said deed is recorded in Liber 967, folio 180, of said land records and is made part hereof.

6. Complainant is informed and believes and therefore avers that the said alleged sale never was made, and the deed alleged to have been executed in pursuance thereof was a fraud upon said Barbara Brown, perpetrated by said McIntire for the purpose of getting the control and possession of said property, and that he has ever since appropriated the rents, issues, and profits thereof to his own use.

7. That while complainant is informed and believes and so avers that there is not now and never was such a person in existence as the said Emma Taylor described in the said deed, complainant nevertheless avers on information and belief that even if there be such person she paid no consideration for said conveyance, and that the deed has never been delivered to her, and she has never made any claim of title to said property, but, on the contrary, her name was fraudulently used without her knowledge or consent by said McIntire for the purpose of obtaining said property for himself, and that he paid from his own means whatever was paid to the holder of the note held and secured by the said trust, and has ever since controlled said property and has received to his own use the rents and profits thereof.

8. That said Barbara Brown departed this life on the 24th day of February, 1883, wholly ignorant of the said fraud perpetrated upon her, and complainant has only within the past week discovered the facts herein set forth as to said pretended sale and the deed executed in pursuance thereof.

FRANKLIN H. MACKEY,
Sol. for Compl't.

580 *Joint Answer. Filed June* 2, 1891.

In the Supreme Court of the District of Columbia.

ELIZABETH BROWN
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE, and EMMA TAYLOR. } Equity. No. 12977.

Joint answer of Edwin A. McIntire and Martha McIntire to the amended bill in the above-entitled cause.

1. 2. We do not believe that the complainant is of the age of 21 years or a resident of the District of Columbia, and we do not know that Barbara Brown is deceased and the complainant her sole heir-

at-law; we therefore deny all the allegations in reference to the complainant in the 1st & 2nd paragraphs of the bill.

3. We deny all the allegations made in the 3rd paragraph of the bill.

4. We admit that on the 8th day of June, 1880, Barbara Brown executed a deed of trust to E. A. McIntire, as trustee of the property named, but it was given to secure the payment of $400, and not $500, as alleged.

5. We admit that the property was sold at a public sale by virtue of the deed of trust mentioned in the preceeding paragraph, and that the same was sold for $400 and a deed made to the purchaser, Emma Taylor, who shortly afterwards assigned her purchase to the defendant Martha McIntire by deed dated April 25, 1881, and recorded in Liber 1578, folio 86, of the land records of the District of Columbia, which deed was also joined in by the said Barbara Brown, the former owner of the property.

We deny that there was any fictitious bidder or bidding or fictitious name used in the trustees' deed or that anything fraudulent, dishonorable, or even unusual occurred at the sale or in connection therewith.

6. We deny that said sale and the deed to Emma Taylor was a fraud upon Barbara Brown or that she was ever even dissatisfied with any of the transactions of the trustee, and we deny that defendant E. A. McIntire was the bidder and purchaser and has since appropriated the rents, issues, and profits or any portion of them to his own use. On the contrary, the said Barbara Brown freely and willingly signed, acknowledged, & delivered the deed of April 25, 1881, to Martha McIntire (which said deed was duly witnessed by the attorney of said Barbara Brown) upon the surrender of her note and as an evidence of her entire satisfaction with the transactions, and the said Martha McIntire has since that date paid all the taxes, kept the property in repair, and received the rents thereof.

7. We deny all and every one of the allegations made in the 7th paragraph of the bill.

8. We have no knowledge of the death of Barbara Brown, hence we deny it. We deny that any fraud was perpetrated upon
581 Barbara Brown or that even any injustice or unkindness was shown her, and we deny that the complainant has discovered any facts within the time mentioned or at any time showing any fraudulent sale or deed as alleged.

9, 10. We deny all charges of fraud or fraudulent transaction. The note was the property of defendant Martha McIntire; it had been assigned to her by R. R. Brouner, the payee, and was surrendered by her to Barbara Brown when she (Barbara Brown) joined with Emma Taylor in the above-recited deed to defendant Martha McIntire.

11. We have no knowledge of the death of Barbara Brown or that complainant is her only surviving child and heir-at-law, hence we deny the allegations in paragraph 11.

12. We admit that the deed of April 25, 1881, from Barbara Brown and Emma Taylor to defendant Martha McIntire and the

deed of September 6, 1884, from Emma Taylor to defendant Martha McIntire were recorded on April 7, 1891, and that the delay in recording them was pure carelessness and ignorance on the part of defendant Martha McIntire, who was under the impression that the recording of deeds was solely to protect the grantee in the event of the loss of the deed, and, as she had the deeds in a vault, she felt perfectly safe. If, however, the complainant or the solicitors who filed this bill had been at all anxious to have ascertained who was the owner of the property, they could easily have obtained the information by merely inquiring of either of these defendants or their solicitor or of the tenants on the premises.

13. We deny that the deed of September 6, 1884, is a nullity, and that either of said deeds above referred to are fraudulent or forged and that they were written at the instigation of E. A. McIntire, and that the title was only apparently placed in the name of Martha McIntire, while defendant E. A. McIntire could receive the rents, &c., as alleged. The said deeds were in good faith executed, acknowledged, and recorded in the District of Columbia and, as we are advised, in accordance with the laws thereof. The property is described as "lot thirty-six (36), in Leonard Simmeracher's subdivision of original lot five, in square 1002," and since the date thereof the defendant Martha McIntire has paid the taxes, kept the property in repair, and received the rents thereof.

14, 15. We deny all the allegations made in the 14 & 15 paragarphs of the bill. The defendant Martha McIntire, paid for the properties, in good faith, the considerations mentioned in the deeds. She had no knowledge then of any fraud, and she and her codefendant deny that there was any fraud or false or fraudulent recitals, and aver that in all their transactions they have acted in truthfulness and honesty, and they deny that the complainant has any right to call upon them or either of them for any account.

582 *Answers to Interrogatories.*

These defendants, denying the right of the complainant to propound the interrogatories in the amended bill, and not waiving their right to object thereto, answer as follows:

1. Emma Taylor was a lady whom Martha McIntire met some 3 or 4 times at the office of E. A. McIntire, 918 F St., Wash., D. C., and once in Philadelphia.

E. A. McIntire says he first met her about 10 or 12 years ago, when she was introduced by a Mr. Cathcart Taylor, of Philadelphia, who had himself been introduced by Mr. Fred. W. Jones, of this city, and both Cathcart Taylor and Emma Taylor were believed to be related to a Mr. Taylor, who at one time had a flour mill, or controlled one, in Georgetown, D. C.

2. Both these defendants know that Emma Taylor was in Washington from time to time between about 1880 and 1885, but they cannot give dates nor can they say how long she remained.

3. Both these defendants believe that Emma Taylor boarded for

a while at "Evans," on F street between 9 & 10 N. W., and for a while at the "Le Droit," on F street between 8 & 9 streets.

4. She claimed to be a Philadelphian, and had evidently lived there, for she knew the streets and different localities. E. A. McIntire says he wrote to her about ten years ago at a house on Sumner street, near the cathedral, but he cannot at this date recall the number of the house.

5. We do not positively know her present address. When we last heard of her it was about 3 years ago; from Mr. John Taylor, an employee in one of the departments in this city, who said she had then recently married and gone west to Pittsburg or Chicago.

E. A. McIntire says that several years ago he wrote, at the suggestion of Mr. Fred. W. Jones, who knew her, addressing her by her maiden name, at Pittsburg and at Chicago, but the letter was returned from Pittsburgh, and the one sent to Chicago was never heard from.

Subsequently Mr. Jones offered to procure the proper address, but sickness prevented him.

6. Mr. Cathcart Taylor introduced Emma Taylor to E. A. McIntire. Mr. Cathcart Taylor's residence in Philada. is not remembered, but E. A. McIntire says that he met him some years ago on Chestnut street, Philada., and was then presented by him with a printed copy of an address delivered by said Taylor before the alumni of the Philadelphia Central high school, and from the fact of his delivering such an address presumes that he must have lived in Philadelphia all his earlier days. Miss Emma Taylor was also known to Wm. H. Helmick, Jos. T. Coldwell, Fred. W. Jones, and Elmer Atkinson, of Washington, D. C. Mr. Helmick, Mr. Coldwell, & Mr. Jones are now deceased. Mr. Atkinson's address is not remembered, but he is a claim agent practising before the Pension Office. Deeds signed by Emma Taylor have been witnessed in Wash'n by H. Richey, Floyd Harleston, and S. A. Peugh, as
583 well as by the officer taking the acknowledgment. We also know of ten of our relatives conversing with her at different times.

7. Martha McIntire says she never received any letters from Emma Taylor. E. A. McIntire says he has had several notes from her, but never any extensive correspondence. The notes, however, had nothing whatever to do with this suit or the property involved. They were of a confidential nature, and he should have to decline filing them if they were now in his hands.

8. We have had money transactions with her. We have forgotten if checks were used in payment or part payment, but the deeds we believe to be the only receipts obtained, and several of them are filed in this court. E. A. McIntire at one time about 10 yrs. ago assisted her in the collection of a draft or check in the Central National bank of this city. She deposited in one of the downtown banks of this city.

9. Martha McIntire says she may have paid by check or in cash or part both. She cannot now remember. She is not positive if

she paid direct to Emma Taylor or left the money with E. A. McIntire to pay her, but is under the impression that it was paid direct to her at E. A. McIntire's office.

9½. E. A. McIntire says he has no distinct recollection as to how the money was paid to him, but thinks it was paid in cash, and he, after paying the expenses of the sale, paid the balance to Martha McIntire, who was the holder of the note.

10. We have endeavored to answer fully.

11. Yes. E. A. McIntire expects at the proper time to produce witnesses who will testify as to their knowledge of Emma Taylor. One witness for the complainant in another case recently instituted by the same solicitors who filed the bill in this case truthfully acknowledged that he had met Miss Emma Taylor. (See testimony of Mr. Forrest in the case of Mary C. Pryor, #12761, equity.) Further we answer that we are informed and believe and so charge in regard to this suit and the several suits also recently filed by the same solicitors (to wit, equity causes Nos. 12761, 12978, 12979, 13034, 13035, 13177) that not one of said suits were instituted at the instance of the complainants themselves, but that the solicitors who filed the bill in this cause and the other bills named have acted in connection with or at the suggestion of the solicitor who filed a bill of a similar nature (equity, #10745), and who we believe to be actuated solely with a desire to damage the reputation of these defendants and prejudice the courts against them in their defence of the matters involved in the settlement of the estate of David McIntire, dec'd, which has for 7 years been litigated by said solicitor in the courts of this District notwithstanding that the opinions of the courts have been uniformly rendered in favor of these defendants and against the clients of said solicitor; that when said equity cause No. 10745 was filed it was charged as in the bill in this cause that Emma Taylor was a myth, although the complainant in that bill knew well to the contrary. The answer of E. A. McIntire indicated that, among other persons, Mr. Wm. Helmick, a justice of the peace, would know that the charge
584 in said equity cause 10745 was false, and about that time, now nearly 4 years ago, the said Justice Helmick stated in the presence of S. S. Henkle (who was then as now the attorney of E. A. McIntire) that he, Helmick, remembered Emma Taylor, and that he had taken her acknowledgments to several deeds, and that he would not have done so if he had not known her, and about the same time Mr. Fred. W. Jones, then a member of this bar, also stated that he knew Emma Taylor, and had given E. A. McIntire an address in Philadelphia that he thought would reach her. If the testimony in said cause No. 10745 had been filed in the usual way so that that cause could have proceeded to trial within any reasonable time after the date of the last session before the examiner (now about 3½ years ago, and the testimony has not yet been filed), the testimony of both Justice Helmick and Mr. Fred. W. Jones would have been secured some months before their sudden deaths, and would, we believe, have conclusively disproved the allegation that Emma Taylor was a myth.

Answering the amendments to the amended bill, these defendants say:

5. We admit that E. A. McIntire as trustee sold the property at public sale to Emma Taylor for the sum of $400 and executed a deed to her, but we have no knowledge of the record thereof.

6, 7, 8. We deny the allegations in the 6, 7, and 8 paragraphs. We deny that the complainant has within the past week preceeding the filing of this amendment to the amended bill discovered such facts as are entirely antagonistic to such facts as she states in the 8 paragraph of the original and of the amended bill had been discovered by her within the week preceeding the filing of the amended bill.

On the contrary, we aver that there was a sale and it was made in good faith; the property was struck down to Emma Taylor, and that she and the former owner, Barbara Brown, subsequently joined in a deed of the property to the defendant Martha McIntire, and that said deed is dated April 25, 1881, and is recorded in Liber 1578, folio 86, and that since the date thereof the said Martha McIntire has paid the taxes, kept the property in repair, made a number of improvements thereto, and has received the rents thereof, and that said defendant, E. A. McIntire, has never had or claimed any interest in the rents or profits thereof.

And further answering the complainant's bill and the amendments thereto, these defendants say that they are informed by the late attorney of this complainant and they so charge that this suit was not authorized by the complainant named in the bill, but was filed by the solicitors whose names are signed to it at their own instance and without the authority of the complainant.

EDWIN A. McINTIRE.
MARTHA McINTIRE.

S. S. HENKLE,
Counsel for Def'ts.

585 We do solemnly swear that we have read the answer by us subscribed and the answer to the interrogatories and know the contents thereof, and that the facts stated therein upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

E. A. McINTIRE.
MARTHA McINTIRE.

Subscribed and sworn to before me this 1st day of June, 1891.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass'l Cl'k.*

Replication. Filed June 12, 1891.

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Testimony. Filed April 18, 1894.

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JUNE 26, 1891.

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Elizabeth Brown.

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Direct examination.

By Mr. MACKEY:

Q. You are the complainant in this case?
A. Yes, sir.
Q. What was your mother's name?
A. Barbara Brown.
Q. Is your mother living or dead?
A. She is dead. She died in February of 1883.
Q. You know this property on I street, described in the proceedings in this cause?
A. I do.
Q. Were you living there in April, 1881?
A. No, sir.
Q. It is alleged that in April, 1881, there was a public sale of that property under a deed of trust. Do you remember any such sale having taken place?
A. No, sir.
Q. Were you living with your mother at that time?
A. I was.
Q. Did you and your mother ever have any conversation about a sale of that property having taken place?

Mr. HENKLE: Objected to as incompetent.

A. No, sir.
Q. Did you ever hear from any source that a sale of this property had taken place?

586 Mr. HENKLE: Objected to as incompetent.

A. No, sir.
Q. Did your mother know as a fact when she died that this property had been sold?

Mr. HENKLE: Question objected —, it being absurd that she knew whether her mother knew it or not.

A. No, sir.

Cross-examination.

By Mr. HENKLE:

Q. Where did you live at that time?
A. At the corner of 13th and F streets northeast.

Q. How many squares from this property?
A. Four or five squares.
Q. How old were you in 1881?
A. I was thirteen years old.
Q. Were you going to school at that time?
A. No, sir.
Q. Living at home with your mother?
A. Yes, sir.

Redirect.

By Mr. MACKEY:

Q. You were your mother's only child?
A. Yes, sir.
Q. Your father is dead?
A. Yes, sir.
Q. He died before your mother?
A. Yes, sir.

Recross.

By Mr. HENKLE:

Q. Where do you live now?
A. No. 1907 11th street northwest, in this city.
Q. Where have you been living within the last few years?
A. In New York.
Q. When did you come to Washington?
A. I have been here several weeks now.
Q. Did you come here to live?
A. I do not know whether I will live here or not.
Q. You have not determined about that?
A. No, sir.
Q. How did you come to bring this suit?
A. Well, my aunt heard something of it, and she wrote to me to start it up.
Q. Who is your aunt?
A. Not my aunt, but Mrs. Schessler.
587 Q. Anybody else write to you?
WITNESS: At that time?
Mr. HENKLE: Yes, or since.
A. Mr. Mackey wrote to me after he saw my uncle.
Q. What did he write to you?

Mr. MACKEY: Objected to as calling for statements made by counsel to client, and I instruct the witness that she is not obliged to answer, and that she need not answer unless she wishes to do so.

Mr. HENKLE: Do you decline to answer the question?
WITNESS: I do.
Q. Where is Mrs. Schlesser?
A. At No. 1907 11th street northwest, where I am stopping.
Q. Did you authorize Mr. Mackey to bring this suit?

A. I gave it into the hands of Mr. Moulton.
Q. Did you not give it in the hands of Mr. Mackey?
A. Not directly.
Q. At the time this suit was brought had you ever authorized Mr. Mackey to bring it?
A. No, sir; because I had already spoken to Mr. Moulton about it.
Q. And you had not spoken to Mr. Mackey at all at that time?
A. I did not wish to take it from Mr. Moulton and give it to some one else.

Redirect.

By Mr. MACKEY:

Q. You authorized Mr. Mackey to bring this suit?
A. I did.

Recross.

By Mr. HENKLE:

Q. Well, did he bring it?
A. You must ask Mr. Moulton.

ELIZABETH BROWN.

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Leonard Simmamacher.

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Direct examination.

By Mr. MACKEY:

Q. Do you know the complainant in this case, Elizabeth Brown?
A. Yes, sir.
Q. Did you know her mother?
A. Yes, sir.
Q. Is her mother dead?
A. Yes, sir; she died some ten years ago; I think in 1882 or 1883.
Q. What relation was the mother to you?
588 A. She was my sister.
Q. How many children did she leave?
A. One girl, and that is Elizabeth Brown, the complainant in this case.
Q. Did she leave any husband?
A. No, sir; he died before she did.
Q. Do you know this property, lot 36, in Simmamacher's subdivision of original lot 5, in square 1002?
A. Yes, sir; it is at the corner of I and 12th streets northeast, in this city.
Q. Did you live anywhere near there in 1880?
A. Yes, sir; I lived about one hundred and twenty-five feet from there, about four doors from the house.
Q. Were you living there in April, 1881?
A. Yes, sir.

Q. It is said that there was a public sale of that property under a deed of trust on the first of April, 1881, or thereabouts. Do you know of any sale of that property taking place at that time and place?

A. No, sir; I do not recollect of any sale taking place there.

Q. If any sale had taken place there at that time would you have known it?

Mr. HENKLE: Objected to as leading and incompetent.

A. I should think I ought to know something about it, living right near there.

Q. Did you ever hear from anybody of a sale having taken place there at that time or at any other time?

Mr. HENKLE: Same objection.

A. No, sir.

Q. Were you at work at that time?

A. My business was in the market.

Q. Did you go to market every day?

A. Yes, sir; most every day.

Q. Did you pass that house at any time?

A. I did not have to pass the house.

Mr. HENKLE: I object to all these questions as leading.

Q. Did you pass the house during the week?

A. I frequently did.

Q. Did you see any flag up there?

Mr. HENKLE: Objected to as leading and incompetent.

A. No, sir.

Cross-examination.

By Mr. HENKLE:

Q. What were you doing at that time?

A. Produce dealer or huckster in the market.

589 Q. What part of your time did you spend in the market?

A. In the morning.

Q. Until what time of the day?

A. Until one o'clock.

Q. Then where did you go?

A. I generally went home.

Q. Where did you buy your produce?

A. At market.

Q. You did not go into the country to buy it?

A. No, sir.

Q. You spent the fore part of the day in the market?

A. Yes, sir; except on Saturday, when I was there all day.

Q. Can you swear that this property was not sold on Saturday?

A. No, sir.

Q. You cannot swear to that?

A. No, sir; but I think I would have heard or known something about it if it had been.

Q. Can you swear of your own knowledge that this property was not sold on any Saturday or any other day?

A. To the best of my knowledge, it was never sold.

Q. I am not talking about your belief, but your knowledge.

A. I never heard of it.

Q. I am not talking about what you heard. Do you know of your own knowledge that it was not?

A. No, sir.

Q. You cannot swear that it was not sold at any time?

A. No, sir. I never saw a red flag there.

Q. You cannot swear that there was not a red flag there?

A. No, sir.

Redirect.

By Mr. MACKEY:

Q. You can swear that if that property was sold you would have heard of it?

Mr. HENKLE: Objected to.

A. Yes, sir.

his
LEONARD x SIMMAMACHER.
mark.

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Emma Cochran.

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Direct examination.

By Mr. MACKEY:

Q. Do you know the complainant in this suit, Elizabeth Brown?

A. Yes, sir.

Q. Do you know the property on I street near 12th street northeast, in this city, where Elizabeth Brown's mother used to live?

590 A. Yes, sir.

Q. Do you live anywhere near there?

A. The second house from there.

Q. Did you live there in April, 1881?

A. In the year 1881 I was living on the corner of 13th and I streets northeast, in this city.

Q. How far was that from this property?

A. On the same square and on the same side of the street. There is a row of six houses; then there is a vacant lot, and then Mrs. Brown's property commences.

Q. Were you acquainted with Mrs. Brown, the mother, at that time?

A. The mother was dead at that time; I do not exactly remember the year she died, but I remember the time.

Q. You do not know whether it was before or after this sale in 1881?

A. I think she was dead before that.

Q. Did she die in that house?

A. No, sir; she did not to my knowledge.

Q. Do you remember any public sale having taken place of that property about that time in April, 1881?

A. No, sir; I never did.

Q. If any sale had taken place there would you have known it?

Mr. HENKLE: Objected to.

A. I think so; I was living on the corner of 13th and I streets in the year 1881, and I was going to school every day except Saturday from nine to three o'clock, but I was at home after three o'clock and generally all day on Saturday.

Q. You remember, then, of no sale taking place there?

A. No, sir; not to my knowledge.

Q. Did you ever hear of any sale taking place there?

A. No, sir.

Q. Did you hear any bell ring or see any red flag there?

A. No, sir.

Cross-examination.

By Mr. HENKLE:

Q. Probably it is not a fair question to ask a lady, but I will ask how old you were at that time.

A. I was about twelve or thirteen years old.

Q. How far from there did you go to school?

A. To the Peabody school building, about ten squares away, near the Greene statue, at Maryland avenue and 4th street northeast.

Q. What time did you go to school?

A. At nine o'clock in the morning, and got out at three o'clock in the afternoon.

Q. You did not go home during the whole day from nine to three o'clock?

A. Sometimes to lunch.

591 Q. How often?

A. Well, according to my feelings.

Q. As a rule you were absent from home from nine to three o'clock?

A. Yes, sir.

Q. A dozen sales might have taken place there without your knowledge?

A. I do not know.

Mr. MACKEY: I object to the question unless counsel states the time.

Mr. HENKLE: The property might have been sold a great many times without her knowing it.

WITNESS: I knew what was going on in the neighborhood.

Q. Did you know what was going on between nine and three o'clock?

A. No, sir; but I should have heard something of it, I think.

Q. I am talking of your own knowledge, not what you might have heard. Is it not possible that it might have been so without your knowing it?

A. It might have been.

Q. It might have been sold a dozen times without your knowing it?

A. Well, as my people were very intimate and friends of Mrs. Brown, they might have told me of it; but it might have been sold between nine and three o'clock in the day without my knowledge.

Q. It might have been sold a great many times. You do not know whether that property was sold or not of your own knowledge. Can you swear that it was not sold?

A. No, sir; not of my own knowledge.

Redirect.

By Mr. MACKEY:

Q. If in April, 1881, a red flag had been placed there after three o'clock and a bell rung, would you have known it?

A. I should, certainly.

Q. They could not have placed a red flag there and rung a bell for a sale without your knowing?

A. No, sir.

Recross.

By Mr. HENKLE:

Q. Were you on the street at three o'clock?

A. No, sir; I was generally at home studying my lessons.

Q. Could not a sale have taken place a square away without attracting your attention?

A. Not on the same block. I do not think it could.

MRS. EMMA COCHRAN.

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592 Adjourned to—

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JULY 2, 1891.

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John H. Lewis.

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Direct examination.

By Mr. MACKEY:

Q. You reside in this city?

A. Yes, sir; at No. 1100 Florida avenue.

Q. Where did you live on April first, 1881?

A. At No. 831 13th street northeast, corner of I, in this city.

Q. Did you know where Elizabeth Brown lived at that time?
A. Yes, sir; I lived on the opposite corner and she lived diagonally across on the opposite side of I street between 12th and 13th streets northeast, on the north side.
Q. It is alleged that a sale of that property took place at auction on the first of April, 1881. Do you know of any such sale as that — have taken place there?
A. No, sir; I do not.
Q. If a sale of that kind had taken place there at that time would you have been likely either to have known of it or heard of it?

Mr. HENKLE: Objected to as utterly incompetent. It is not for him to say whether he would have known of it or not.

A. I think it is more than probable that I should.
Q. Did you ever hear anybody speak of a sale having taken place around there at that time?

Mr. HENKLE: Objected to as calling for hearsay testimony.

A. No, sir; I never did.
Q. You may state what your business is.
A. I am a builder.
Q. What was your business then?
A. The same thing—a builder and contractor.

Cross-examination.

By Mr. HENKLE:

Q. Can you swear that this property was not sold at that time?
A. No, sir; I cannot.

JNO. H. LEWIS.

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593 *Alice Burgess.*

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Direct examination.

By Mr. MACKEY:

Q. Where do you reside?
A. No. 815 13th street northeast, in this city.
Q. Did you reside there on the first of April, 1881?
A. Yes, sir.
Q. Did you know Elizabeth Brown's mother, Barbara Brown, who is now dead?
A. Yes, sir.
Q. How far was her house from yours?
A. She lived just around the corner from us, between 12th and 13th streets—about a square away, I guess.
Q. Did you know of any sale at public auction having taken place of Mrs. Brown's property on the first of April, 1881, or anywhere about there?
A. I do not know of any such sale.

Q. If any sale of that kind had taken place there about that time would you have been likely to have known of it?

Mr. HENKLE: Objected to as incompetent.

A. I think I should.

Q. Or, if you had not known of it, would you have been likely to have heard of it?

Mr. HENKLE: Same objection.

A. Yes, sir.

Cross-examination.

By Mr. HENKLE:

Q. Can you swear that no such sale did take place?

A. No, sir; I cannot.

ALICE BURGESS.

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Kate Battenfield.

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Direct examination.

By Mr. MACKEY:

Q. Where did you reside on April first, 1881?

A. 12 and I streets northeast, in this city.

Q. Did you know Mrs. Barbara Brown?

A. Yes, sir.

Q. Do you know where she lived at that time?

A. Yes, sir—at the corner of 13th and F streets northeast,
594 at that time, and then on I street between 12th and 13th streets; I do not know the number.

Q. How near to that house did you live?

A. Just three houses between that and the house I lived in and a space with no houses built there.

Q. Do you remember any public sale taking place of that property on the first of April, 1881, or thereabouts?

A. No, sir; I do not.

Q. If any public sale of that sort had taken place of that property at that time would you have been likely to have known of it?

Mr. HENKLE: Objected to as hearsay.

A. Well, I think I would have heard of it.

Q. Did you ever hear any of the neighbors or anybody speak of it?

Mr. HENKLE: Objected to as hearsay.

A. No, sir.

Cross-examination.

By Mr. HENKLE:

Q. Can you swear that no such sale took place?

A. No, sir; I would not like to swear to that, because I do not know whether any sale took place or not. I do not know of any taking place.

Redirect.

By Mr. MACKEY:

Q. You simply do not know of any sale taking place there?

A. No, sir. I was living right there, at the corner, near Mrs. Barbara Brown's property, at the time, and I do not remember any sale taking place.

Q. Did you ever hear her brother speak of it?

A. No, sir.

Q. If any sale had taken place at any time there would you have probably known of it?

Mr. HENKLE: Objected to as leading and incompetent.

A. I should think I ought to, living right in the family there at the time.

MRS. KATE BATTENFILED.

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William J. Frizzell.

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Direct examination.

By Mr. MACKEY:

Q. You reside in this city?

A. Yes, sir.

595 Q. Do you know Edwin A. McIntire?

A. I have met him several times.

Q. Do you know this property claimed by Miss Elizabeth Brown in this case on I between 12th and 13th streets northeast, in this city?

A. Yes, sir; I lived within four squares of it. I think Miss Brown's property is lot 36, and I own adjoining that on the east.

Q. Did you ever have any controversy with Edwin A. McIntire in respect of that property? If so, state what it was.

A. Well, I will give it in a few words. My property was vacant and about eighteen months ago I undertook to build on it. Their water pipe was over on my lot, and my contractor took up the water pipe—the service pipe—which was afterwards laid in the alley. There was a three-foot alley between my wall and the wall of the property in question. The service pipe was laid in that alley, but the alley was not repaved. There was some roof water fell to the north into the yard and drained into the yard. There was a hydrant in the yard running very often, and the consequence was

that this water swept around and went into my basement, and that business, I think, brought me first in contact with Mr. McIntire.

Q. You may state when you saw Mr. McIntire, what conversation you had with him, and what occurred in consequence of it.

A. I cannot state the precise time. I think it was some time between April and August of last year. I saw Mr. McIntire a number of times and requested him to have something done to carry off that water so that it would not run into my cellar and basement, and he promised from time to time, and said that as soon as the lady who owned the property would give him permission to spend some money he would do it. He gave a number of reasons—that the rent was low and the lady had to live on what she received from it. I got very tired of the business. I found out that Mr. McIntire was the owner of the property. I wanted some redress. If it could not be remedied I wanted somebody to sue for damages; and then he told me some lady in Philadelphia was the owner of the property.

Q. Did he tell you where she was to be found?

A. In one of our interviews he told me that at that time she was in the city, and I think he told me that she was at the Frederic, which I located at the corner of 9th street and New York avenue.

Q. What, if anything, subsequently occurred?

A. Mr. McIntire failed to have anything done with the premises.

Q. Did you endeavor to ascertain where this lady was to be found that he told you was at the Frederic?

A. I do not think I made any exertions in that direction. The matter culminated in a suit in the police court. I had a warrant issued for Mr. McIntire, and he appeared there some time while Judge Mills was holding court last year; I think the first or second day that the judge was on the bench during vacation.

Q. Did Mr. McIntire testify on that occasion?

A. Yes, sir; he testified that he had no interest in this property except as the agent for the owner, who resided in Philadelphia.

596 Q. Did he state who the owner was?

A. No, sir; he was not asked that question by the prosecuting attorney. I was very anxious that he should ask the question, but he would not.

Q. Mr. McIntire simply stated that the property was owned by a lady in Philadelphia?

A. Yes, sir; that he had no interest in it; never had any interest; had never loaned any money; had never been trustee or *cestui que trust.* in the premises; but that he had loaned money on the premises adjoining, and that he had no further interest in that property than representing the owner, who was a lady in Philadelphia.

Cross-examination.

By Mr. HENKLE:

Q. That trial in the police court took place, you say, in July or August of last year?

A. I think it was in August. I fix that time because Judge Miller usually goes off in August and then Judge Mills comes on.

Q. Are you not mistaken about what Mr. McIntire testified to about the ownership of that property?

A. No, sir.

Q. Did he not testify that it belonged to Martha McIntire?

A. No, sir.

Q. You are quite sure of that?

A. He never mentioned that name in his testimony in the police court.

Q. You are quite sure of that as you are of anything you have testified to?

A. I am quite as sure of that as I am of anything I am talking about, because that was a thing I wanted to learn and could not learn it.

Q. The result of your controversy with Mr. McIntire about that house was a state of ill-feeling on your part against him?

A. No, sir; none whatever; it was only a question of business—to keep his water out of my cellar; that is all. I have no feeling against Mr. McIntire, and I never met him before in any controversy.

Q. Who represented you in the police court?

A. Mr. Dumont represented the Government.

Redirect.

By Mr. MACKEY:

Q. You were anxious at that time to know who the owner of the property was?

A. Yes, sir.

Q. Why did you want to know?

A. In the event that I did not receive a favorable judgment in the police court I proposed to sue for damages.

Q. You were at that time listening anxiously for him to mention the name of the owner?

597 A. Yes, sir; and I searched the records diligently to see who the owner was, and I tried to have Mr. McIntire testify as to who the owner was.

Q. I understand you asked him before he went to the police court whether the owner was Emma Taylor?

A. I do not know whether I asked him or he stated it voluntarily; but it came out in one of the statements that Emma Taylor was the owner, and I searched the records for her, but could not find her.

Q. How long was that before you summoned Mr. McIntire in the police court?

A. I cannot say. I had two or three interviews with Mr. McIntire in his office on F street before he moved to C street and one or two in his C Street office.

Q. You remember that he stated that Emma Taylor owned the

property, and that she was stopping at the Hotel Frederic about four or five weeks of the time you had him up in the police court?

A. I think it was during June or July that he told me that. I cannot state positively the date.

Q. You are not positive as to the date of the month, but you are positive that it was between June and July?

A. That is my best recollection.

WILLIAM J. FRIZZELL.

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(Adjourned.)

JULY 20, 1891.

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William S. Browning.

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Direct examination.

By Mr. MACKEY:

Q. What is your business and where do you now live?

A. I am a clerk in the Post Office Department and I now reside at No. 13 R street northwest, in this city.

Q. Where did you live in April, 1881?

A. On I street between 12th and 13th northeast—twelve hundred and something. I do not remember the last figures.

Q. What are those papers you have in your hand?

A. These are receipts for payment of my rent of that house which is designated as No. 1216 I street northeast, dated, respectively, February 16th, 1881, for the rent up to the 11th of that month; April 16th, 1881, for the rent up to the 11th of that month, and May 21st, 1881, for the rent up to the 11th of that month.

Q. So that you were there in February, March, April, and May, 1881?

A. Yes, sir.

Mr. MACKEY: I here give those receipts in evidence.

598 Mr. HENKLE: For what purpose?

Mr. MACKEY: For the purpose of showing that he was there in that house at that time.

Mr. HENKLE: They are objected to as immaterial and incompetent.

(NOTE.—And the said receipts are herewith filed in evidence and marked respectively Exhibits E. B. Nos. 1, 2, and 3.)

Houses and lots sold and exchanged. Money carefully invested. Loans negotiated.

Office of E. A. McIntire, real-estate broker, No. 918 F street N. W.

$8.50. WASHINGTON, D. C., *Feb. 16th*, 1881.

Received of Mr. Browning the sum of eight & $\frac{50}{100}$ dollars for one mo. rent of house No. 1216 I St. N. E. (due 11th).

E. A. McINTIRE.

I desire to study the interests of both landlords and tenants, but tenants must remember that in my position as agent I am expected to collect promptly and report only such repairs as are actually necessary.

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Houses and lots sold and exchanged. Money carefully invested. Loans negotiated.

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Received of Mr. Browning the sum of eight & $\frac{50}{100}$ dollars on acc't rent of house No. 1216 I St. N. E., due 11th.

E. A. McINTIRE.

I desire to study the interests of both landlords and tenants, but tenants must remember that in my position as agent I am expected to *to* collect promptly and report only such repairs as are actually necessary.

E. A. McINTIRE.

599 Q. How long were you there altogether?

A. Well, I think, as near as I can remember, I went there in November, 1880, and left there in June, 1881.

Q. During that time di- any public sale of that property which you were living in take place?

A. None that I knew of.

Q. If any sale had taken place, would you have known of it?

A. Yes, sir.

Q. I will ask you more particularly whether a public sale of that property took place on the first of April, 1881.

A. I do not remember any at all at that time or any other time during my stay there.

Q. Did you ever see any red flag stuck out there or hear a bell rung, or anything of that sort?

A. No, sir.

Q. Did you ever hear any one say that the property had been sold?

Mr. HENKLE: Objected to as hearsay and incompetent.

A. No, sir.

Q. Did you know to whom that house belonged at that time?

A. Well, I always thought it belonged to Mrs. Barbara Brown. Some of the receipts said B. Brown. I do not know whether that meant Barbara Brown or not.

Cross-examination.

By Mr. HENKLE:

Q. When did you say that you went into that house to live?

A. Well, I think in November, 1880, and I remained there until June, 1881.

Q. What was your business at that time?

A. I was employed at the Columbia Railway Company's stables, on H between 14th and 15th streets northeast, about, I judge, three squares from where I lived.

Q. What time in the morning did you leave home, and what time in the evening did you return home?

A. I left home to go to work about five o'clock, and I left the stables about seven o'clock, I think, in the evening on my return home.

Q. Did you go home at noon?

A. No, sir.

Q. Then you were not at home from five o'clock in the morning until seven o'clock in the evening?

A. No, sir; not without I had a day off from work. We were allowed a day off during the week.

Q. You were there at work every week day?

A. Yes, sir; unless I wanted a day off; one day in a week.

WILLIAM S. BROWNING.

600 Subscribed and sworn to before me this 20th day of July, 1893.

ALBERT HARPER, *Examiner.*

(Adjourned.)

JULY 23, 1891.

* * * * * * *

Sarah E. Browning.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. You are the wife of William S. Browning, who has testified in this case?

A. Yes, sir.

Q. On April first, 1881, where were you living?

A. No. 1216 I street northeast, in this city.

Q. Of whom were you a tenant at that time?
A. We paid our rent to Mr. Edwin A. McIntire.
Q. When did you first go in there, as far as you can remember?
A. November, I think, 1880.
Q. And you remained there until when?
A. 1881; April, 1881.
Q. When did you leave there?
A. We left there in April, 1881.
Q. In April, 1881?
A. Now you have got me. You have the receipts for the rent.
Q. Do you remember whether it was the latter part you left there or whether you left there in the summer or spring?
A. It was in the summer.
Q. It was then after April?
A. Yes, sir; we have receipts for April.
Q. It is said, Mrs. Browning, that an auction sale of that property took place on the first of April, 1881?

Mr. HENKLE (interposing): I object to Mr. Mackey telling the witness what has been said.

Q. (Continuing:) Was there any sale of that sort?
A. No, sir.
Q. Was there any red flag up there?
A. No, sir.
Q. Was there any bell-ringing?
A. No, sir.
Q. There was no sale at all?
A. No, sir.
Q. You may state whether or not you were much at home at that time.
A. I was always at home and was never away from home while we lived there.
Q. Did you have a family?
601 A. Yes, sir; and I had young children; so young that I could not leave them.
Q. What rent did you pay?
A. $8.50 per month. It was a two-story frame house with five rooms, and it was in good order when we went in.

Cross-examination.

By Mr. HENKLE:

Q. Why do you say positively that there was no sale there?
A. Because I know there was none there while I lived there.
Q. How do you know it?
A. Why, I would know it if a sale was going on.
Q. Do you say that it was impossible for a sale to have taken place there without your knowing it?
A. I do not know how a sale could have taken place there while I was at home.
Q. Did you see on the street all the time?

A. Yes, sir; I was in front all the time.
Q. What part of the house were you in?
A. In the front room downstairs.
Q. You were every day during that time?
A. Yes, sir, and I never left there at any time, for I had a young baby and I was not very well—my health was poor—and I was at home all the time.

Redirect.

By Mr. MACKEY:

Q. If there was any bell-ringing you would have heard it and if there had been any red flag you would have seen it?
A. Yes, sir.

SARAH E. BROWNING.

* * * * * * *

Lena Eselhorst.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Where did you live in April, 1881?
A. In Sidney Heisinger's house, with one house in between me and Mrs. Brown.
Q. How long had you been living there?
A. Two years.
Q. Did any sale of Mrs. Brown's house take place on April first, 1881?
A. No, sir; not so long as I lived there.
Q. If any sale had taken place there would you have known of it?

Mr. HENKLE: Objected to as incompetent.

602 A. Certainly. I was living there with one house between.
Q. You never saw any red flag or heard any bell-ringing or saw any crowd there?
A. No, sir.

Cross-examination.

By Mr. HENKLE:

Q. When was your attention first called to this matter?
A. My intention is to tell the truth.
Q. When were you first asked about this matter—as to whether there had been any sale there?
A. By Mr. Mackey.
Q. Was he at your house?
A. Yes, sir.
Q. When was that?
A. I could not remember whether it was last week or week before last.

Q. What did Mr. Mackey say to you when he came?
A. He asked me if I knew that there was any red flag to Mrs. Brown's property—if there was a sale there—and I told him, No.
Q. Can you remember for ten years distinctly everything that happened there?
A. I think so. I would remember if I saw a red flag there.
Q. Was there no sale of anybody's property on the square?
A. No, sir; I am quite sure of that.
Q. You swear to that?
A. Yes, sir.
Q. You were at home all the time?
A. Yes, sir; I had two twins and I could not get away.
Q. You are perfectly dead sure that there could not have been any sale there without your knowing it?
A. Yes, sir.
Q. Your recollection is perfect as to everything that happened ten years ago?
A. Yes, sir; and if it was twenty years ago I could tell that there was no sale there.
Q. Do you remember everything else?
A. No, sir.
Q. Why do you remember about the sale?
A. Well, I could go to the door and look to see what was going on.
Q. Do you remember everything that went on in that street ten years ago?
A. No, sir; because I had no time to be all the time at the door, for I had work to do.
Q. Your work kept you pretty busy in the house?
A. Yes, sir.
Q. You did not go out unless something specially called your attention to it?
A. No, sir.
603 Q. There were a thousand things around going on of which you did not know?
A. Well, there was but one house in between me and Mrs. Brown's house, and I never saw or heard of any sale there.
Q. You have been talking about this matter with other people—with Miss Brown, for instance—have you not?
A. No, sir; she came and gave me notice to be here.
Q. Then you have been talking with Miss Brown about it?
A. No, sir.
Q. Did you talk to your daughter about it?
A. No, sir.
Q. Nobody but Mr. Mackey and Miss Brown came to see you?
A. No, sir.
Q. How many times did Mr. Mackey come to see you?
A. Once.

her
LENA x ESELHORST.
mark.

* * * * * * *

Annie Eselhorst.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. You are, I believe, a daughter of the lady who last left the stand?
A. Yes, sir.
Q. Your mother is a German and speaks English imperfectly?
A. Yes, sir.
Q. Does she understand it?
A. Right well.
Q. Where were you living in April, 1881?
A. I was living with my mother in Mr. Heisinger's house.
Q. How far from Mrs. Brown's house on I street northeast, in this city?
A. There is one door between.
Q. Do you know Miss Brown?
A. Yes, sir.
Q. Do you know the house we refer to?
A. Yes, sir.
Q. What was the number of that house?
A. I do not remember our number, but there was just one door between our house and theirs.
Q. Did any auction sale of that property occur about April first, 1881, that you know of?
A. Not that I know of.
Q. If any sale had taken place there, would you have known of it?

Mr. HENKLE: Objected to as incompetent.

604 A. Yes, sir; because I was on the street most. I was a young girl then playing around the house, and I was a playmate of Miss Brown.

Cross-examination.

By Mr. HENKLE:

Q. It is not a very nice question to ask a lady, but I would like to know how old you are.
A. I am seventeen years old.
Q. Then ten years ago you were seven years old?
A. Yes, sir.
Q. Were you going to school at that time?
A. Yes, sir; but I was sickly most of the time, and at that time I was not going to school.
Q. Where did you go to school?
A. In a small house at the corner of 8th and I streets northeast.
Q. How far from where you were living?
A. About four squares.
Q. What time in the morning did you go to school?

A. About nine o'clock.
Q. What time did you come home in the evening?
A. I came home at twelve o'clock. I only went for half the day.
Q. All the time for only half the day?
A. Yes, sir; all the year round, only the time that I was sick.
Q. You stayed at home that time because you were sick?
A. Yes, sir.
Q. Were you in the house?
A. Yes, sir, but, of course, I was also playing on the street.
Q. I suppose you were like other little girls at that time of life, engaged in your plays and not noticing things?
A. I was not allowed to go outside of the yard; in the yard all the time.
Q. In the front yard or back yard?
A. In the front yard.
Q. Do you remember everything that happened ten years ago along there?
A. Yes, sir.
Q. Every procession along there?
A. Yes, sir.
Q. Tell us something that happened there about that time.
A. You speak of a sale. I do not know of any that was there because I was always out, and if any flag was there or any bell-ringing I would have seen it and heard it.
Q. Tell us anything about any funerals that went up there.
A. A colored funeral went up there one day.
Q. Only one?
A. Only one I know of.
Q. Any other funerals went up there?
605 A. Not on I street.
Q. Do you remember anything out of the usual way?
A. Music and such as that around there.
Q. Can you fix the time when any music went along there?
A. No, sir; only in the summer time.
Q. You remember everything that happened there?
A. Yes, sir.

ANNIE G. ESELHORST.

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NOTE.—The defendant Edwin A. McIntire here produces the originals of two deeds heretofore called for, to wit, Barbara Brown *et al.* to Martha McIntire, dated April 25, 1881, and recorded April 7, 1891, in Liber 1578, folio 86, and also Emma Taylor to Martha McIntire, dated September 6, 1884, and recorded April 7, 1891, in Liber 1578, folio 88, of the land records of the District of Columbia.

Mr. MACKEY: Which two deeds I here give in evidence.

(And the same are herewith filed in evidence and marked, respectively, Exhibits A. H. Nos. 1 and 2.)

Mr. MACKEY: I also here offer in evidence the deed from Emma Taylor to Alfred Brown, dated May 14, 1883, recorded May 16, 1883,

in Liber 1043, folio 5, and filed as Exhibit A. H. No. 12 in the case of Pryor *vs.* McIntire, equity, No. 12761, supreme court D. C., and also the deed purporting to be executed by Emma Taylor to Martha McIntire, dated May 31, 1884, recorded October 14, 1886, in Liber 1210, folio 182, and filed as Exhibit A. H. No. 14 in said case of Pryor *vs.* McIntire.

Mr. HENKLE: I object to the offers of the two last-mentioned deeds because they do not involve the property in controversy in this case, and are, therefore, irrelevant, immaterial, and incompetent.

Mr. MACKEY: For the purpose of showing that Mr. McIntire was the agent of Martha McIntire, I now offer in evidence the two papers filed as Exhibits A. H. Nos. 8 and 9 in the said case of Pryor *vs.* McIntire.

Mr. HENKLE: To the admission of which I object as being irrelevant, immaterial, and incompetent in this case.

(Adjourned.)

SEPTEMBER 29, 1891.

* * * * * * *

Samuel A. Peugh.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. You are residing in Washington city and are a member of the bar, Mr. Peugh, I believe?

A. I do and am.

Q. Did you know Barbara Brown in her lifetime?

606 WITNESS: Was she Barbara Simermacher?

Mr. MACKEY: Yes.

A. I did.

Q. Here is a deed (filed as Exhibit A. H. No. 1 with the evidence in equity cause No. 12977, of Brown *vs.* McIntire) which I wish you would look at and state whether you remember witnessing that deed.

A. I have no memory on the subject.

Q. The deed purports to be a deed from Barbara Brown and Emma Taylor to Martha McIntire. I will ask if you ever saw Emma Taylor.

A. I do not remember that I ever saw her.

Q. Did you ever know her or ever hear of such a person?

WITNESS: Let me ask a question. How was Emma Taylor connected with Barbara Brown?

Mr. MACKEY: She purports to have made the conveyance. This deed purports to be a conveyance by Barbara Brown and Emma Taylor to Martha McIntire.

A. I did not know Emma Taylor.

Q. Now, I will ask you to look at that signature, "Samuel A. Peugh," on the deed just referred to and state whether you can

identify that as your signature by any characteristics about it or anything of that sort.

A. I do not know that I can.

Q. How do you usually sign your name? Do you usually write it in full, "Samuel A. Peugh," or "S. A. Peugh"?

A. I usually write it "S. A. Peugh."

Q. Do you ever write it "Samuel A. Peugh"?

A. I would not like to say that I did not.

Q. Well, rare or often?

A. Rare.

Q. Is that signature like your signature?

A. I should not think it is.

Q. Will you state in what respect it differs from your signature?

A. My signature is usually written "S. A. Peugh," with the "S" and the "A" connected with the "P" so that it would be a continuous line beginning with the "A."

Q. All the letters from "A" to the last letter are joined. Is that what you mean? By continuous writing you mean that all the letters beginning with the "A" after the "S" down to and including the last letter of your name are joined?

A. Very apt to be.

Q. I notice that signature upon that deed has the pen lifted from ten to twelve times, if not more. I will ask you if in writing your signature — ever lift your pen as often as that.

A. I would not like to say that I did or did not, but would repeat that I usually sign, beginning with the "A," the "A" and "Peugh" connected and then the "S" before that.

Q. Are there any other characteristics about your signature that differ from that? For instance, do you write a sloping or straight up-and-down hand?

607 A. Generally I write a sloping hand. On special occasions it might differ.

Cross-examination.

By Mr. HENKLE:

Q. Would you swear that is not your signature?

A. I would not like to swear that it is not. I would swear only that it is not like my signature.

Q. Do you remember having a conversation with Mr. McIntire at any time within the last few months?

A. I do.

Q. Did he show this deed to you?

A. He showed me a paper, but I do not now remember what it was.

Q. Did he not show you that deed?

A. I do not know that he showed me that paper. Perhaps he did, but I do not remember.

Q. Did you not then admit that your signature was genuine to the paper he showed you?

A. I do not remember, but perhaps I may have thought so then.

Q. Have you had any reason to change your mind since?

A. I have looked at my handwriting, as I was invited to appear here as a witness, to see how near it compared with my handwriting.

Q. Were you advised that you probably had not written it?

A. I was informed that a question as to the genuineness of the signature was raised.

Q. And then you went to examining it?

A. Yes, sir.

Q. Did you know Barbara Brown?

A. Yes, sir.

Q. Do you know her handwriting?

A. I do not think I do.

Q. You were her trustee?

A. Yes, sir.

Q. You do not remember being present at the signing of this deed?

A. I have no memory on the subject or anything connected with it.

Q. Is that the signature of Mr. Helmick to that same deed?

Mr. MACKEY: I object. I have not asked Mr. Peugh about any other signature than his own. He is not an expert in handwriting.

(NOTE.—Question not answered.)

Q. You and Mr. Helmick were very intimate friends?

A. Yes, sir; for a great many years, and we had a great deal of business together.

Q. You were very familiar with his handwriting?

A. Yes, sir.

Q. And you know it when you see it?

608 A. I should think I would.

Q. Will you look at that signature attached to the acknowledgment of this same deed and say whether or not, in your opinion, it is the genuine signature of Mr. Helmick?

A. I am not an expert in handwriting, but I would conclude that it was his signature.

Q. From your knowledge of his signature?

A. From my memory of it I would conclude it was.

Mr. MACKEY: Which signature are you referring to?

Mr. HENKLE: The signature of Mr. Helmick to the acknowledgment.

Mr. MACKEY: Not the signature as a witness.

Q. Well, look at the signature of Mr. Helmick as a witness to this same deed and say whether or not it is his genuine signature.

A. I should say that they look very much alike.

Q. Do you say that it is not his signature?

A. I would not like to say it is not.

Q. You were frequently in the office of Squire Helmick, were you not?

A. I was.

Q. And he called upon you frequently to witness deeds and other papers, did he not?

A. I would say he occasionally did.

Q. You have had several conversations with Mr. Mackey, have you not?

A. Mr. Mackey requested me to have a conversation with him, which I did have.

Q. You have had several conversations with him?

A. Two at least.

Q. More?

A. I do not remember more.

Q. Where were they?

A. One in his own office and one in my office.

Q. Did Mr. Mackey call your attention to the dissimilarity of the signatures?

A. He did.

Q. And argued you into the opinion that there was a difference?

A. I looked at my own signature to see and discovered a great dissimilarity by having my attention drawn to the fact that there was a question about the genuineness of the signature. I turned to my letter book, being unwilling to testify with absolute certainty as to my signature, to see how near the signature presented to me compared with my signature of that day.

Q. Now, you say that at that time (which was in 1881) you usually signed your name "S. A. Peugh."

A. Yes, sir.

Q. Well, did you not frequently sign your name "Samuel A. Peugh"?

A. I do not remember signing it frequently.

Q. Well, you did do it sometimes?

609 A. I would say that I did, especially in the execution of a deed.

Q. You would be very likely to do it in making a deed?

A. I would be required to do it.

Q. Will you look at that deed (which is now marked by the examiner for identification "S. A. P. No. 1") and say whether that is your signature?

A. It is very unlike my signature.

Q. Well, do you say that it is not your signature?

A. I do not say it is not. I would not swear to one's handwriting in one case in a thousand.

Q. Look at this paper (marked by the examiner for identification "S. A. P. No. 2") and say whether that is your signature or not.

A. I should be inclined to think it is from the character of the "Peugh."

Q. Well, do you think it is not your genuine signature?

A. I would be inclined to think it is, and I am more inclined to think so by the word "trustee."

Q. In the absence of the word "trustee," without that in there, would you think it was your signature?

A. Well, it would be more satisfactory to me to find some old

deeds executed about that time. It just seems to me while sitting here that I have some old deeds executed about that time.

Q. What do you say about that signature on this deed which I have been showing you?

A. I would not swear that it was my handwriting or that it was not.

Q. That paper has the word "trustee" signed there?

A. Yes, sir.

Q. And you say that the word "trustee" there looks like your handwriting?

A. It does.

Q. Can you say whether that word "trustee" there is or is not in your handwriting?

A. I would say that, in my judgment, it is my handwriting.

Q. Well, now, seeing that in connection with the signature, what do you say about the signature?

A. I would not say that it is or is not. It has one or two marks of my signature, while it has other marks wholly unlike it; but, as I have stated, I would much rather prefer taking some old deeds executed at that time.

Q. How could you account for the word "trustee" being in your handwriting and the signature not?

A. I would not undertake to account for it at all.

Q. The probability is that if the word "trustee" is in your handwriting the signature is?

A. That would be inferential.

Q. You would suppose that was so?

A. I would infer that it was so.

Q. In the presence of the fact that you are of the opinion
610 that the word "trustee" is in your handwriting, what would you say as to your opinion as to whether that is your signature or not?

A. Taking the two in connection with each other, it would necessarily be.

Q. I hand you the paper I showed you before (marked for identification "S. A. P. No. 1") and ask you what you now say as to that signature.

A. I would say that the "trustee" is exceedingly like mine.

Q. What do you say as to whether this is or not your handwriting?

A. I would not say whether it is or not.

Q. What is your opinion as to whether it is your handwriting?

A. My opinion would be that the word "trustee" is in my handwriting.

Q. Then your opinion would follow that it is your genuine signature?

A. I would leave that for argument and inference.

Q. What would be your inference?

A. My inference would be that it was necessarily.

Q. Mr. Peugh, I hand you the paper shown you by Mr. Mackey (filed as Exhibit A. H. No. 1 in this case) and wish you now to look

at your signature there after having seen the papers which I showed you and ask you what you have now to say as to your signature on that paper.

A. I would say that it is much unlike my general signature, as I have already stated.

Q. Is it not exceedingly like the signatures which I have shown you?

A. It was so unusual for me to sign in the form on this paper marked for identification "S. A. P. No. 1."

Q. Are not these signatures on these two papers (Exhibit A. H. No 1 in this case and the paper marked for identification "S. A. P. No. 1") almost identical?

A. There is less similarity about that than about any of the other signatures.

Q. Less similarity about what?

A. Between these signatures on these two papers you have just shown me; and I am relying entirely upon similarity, for I have no memory on the subject.

Q. What do you say about that signature now (on Exhibit A. H. No. 1 in this case), having seen these others?

A. It is unlike my usual signature.

Q. That is all you are willing to say?

A. That is all I am willing to say. I would be wholly at a loss to determine.

Q. You would not undertake to say that it is not your signature?

A. I would not; but there is a great dissimilarity from my usual signature.

Q. What do you mean by that, that your first name is written in full?

A. Well, the general characteristics of the signature.

611 WITNESS: I would greatly prefer, with the permission of counsel, to be permitted to look at some old deeds, which would serve the cause of justice, perhaps, more if they be used, and I think I can put my hand on some.

Mr. MACKEY: I notify counsel for defendants that I shall move the court to strike out all this cross-examination in regard to these papers unless counsel permit me to have them for the purpose of making some inquiries of the witness in regard to them, whether counsel for the defendants proposes to put them in evidence or not, and I now call upon the counsel to let me have the papers in order that I also may ask the witness some questions in regard to them. By the papers I mean the two deeds marked by the examiner for identification S. A. P. Nos. 1 and 2, and about the signatures to which the witness has been interrogated. I wish to examine the witness now upon the matter while it is fresh in his recollection and my own. I am not asking that they be put in evidence, but that I may be suffered to examine the witness in regard to them.

Mr. HENKLE: Counsel for the defendants says in reply that it is not competent for him to put in his testimony at this time, and that the counsel for the complainant is not entitled to see the papers nor examine with regard to them until they are offered in evidence.

Mr. MACKEY: That is a question of law which I will submit to the court.

Redirect.

By Mr. MACKEY:

Q. You said, Mr. Peugh, that in executing a deed you would be apt to write your name in full. I will ask you how about witnessing a deed?

A. I could make no distinction now in my mind.

Q. How do you usually witness a deed; do you sign your name with your initials, "S. A. Peugh," or do you sign it in full?

A. I would not like to state from memory.

Q. Can you refer us to any deeds which you have witnessed for the purpose of ascertaining how you generally sign your name as a witness?

A. I do not know that I can.

Q. Now, you stated that you were Barbara Brown's trustee. Were you intimate with her?

A. I was.

Q. Did you attend to her business transactions for her?

A. What related to real estate.

Q. Do you remember how many pieces of property Barbara Brown owned?

A. I do not.

Q. Was it more than two?

A. I remember two.

Q. Do you remember this piece—lot 36, in Leonard Simermacher's subdivision of original lot 5, in square 1002?

612 A. I do not remember that.

Q. You mean that you do not remember the number of the lot and square?

A. I do not.

Q. No. 1216 I street northeast—do you remember that house?

A. I remember that she had a house there, and that is all I remember.

Q. If Barbara Brown had conveyed that house to any person and you had been a witness to the deed, would you have been apt to remember the transaction or not?

A. I would not be apt to remember it, except the fact of her transferring it.

Q. You would remember the fact that she had conveyed a piece of her property?

A. I would.

Q. Searching your memory as carefully as you can, do you remember ever having witnessed a deed in which she conveyed this property?

A. I have no memory on the subject.

Q. Do you remember Mr. Helmick and yourself and Mr. Harleston being present and witnessing this deed at the time you witnessed it, if you witnessed it at all?

A. I have no memory about it at all. Mr. Harleston I do not know by name.

SAMUEL A. PEUGH.

* * * * * * *

(Adjourned.)

OCTOBER 10, 1891.

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Almanzer W. Layton.

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Direct examination.

By Mr. MACKEY:

Q. What is your occupation?

A. I am superintendent of the Frederic flats, at the southeast corner of 9th and K streets northwest, in this city, and have been such ever since it was built, nearly three years.

Q. Since you have been superintendent of that building, has any woman by the name of Emma Taylor boarded there?

A. Not to my knowledge.

Q. If any woman by the name of Emma Taylor ever boarded there, would you have known it?

A. Yes, sir; I should have been likely to have known it.

Cross-examination.

By Mr. HENKLE:

Q. Do you remember the name of every woman who boarded or lived in the house in your time?

613 A. Yes, sir; I think I do.

Mr. HENKLE: This testimony is objected to as incompetent and irrelevant.

ALAMANZER W. LAYTON.

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WILFRED L. MOULTON, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. What is your business?

A. I am connected with my father, Mr. Hosea B. Moulton, in the law business.

Q. Have you made an examination of the books of the Temple café for the year 1890?

A. I have.

Q. Did you find upon those books the name of Emma Taylor?

A. I did not.

Q. You may state how you got those books and how you examined them.

A. I went over to the Temple café and inquired for the present proprietor, Mrs. S. H. Martin, and asked her if I could examine the books. I then examined the registers for the months from April to August, both inclusive, 1890, and found no such name as Emma Taylor registered.

Q. Did you find the name of Taylor?

A. Yes, sir; I found "Miss Taylor."

Q. Was there anything else to indicate where she came from?

A. From New York.

Q. When did she come?

A. On the 3rd day of April, 1890.

Q. And left when?

A. She stayed about two days, I think, and then left.

Q. Was the name Taylor anything like that on Exhibit A. H. No. 1 to the testimony in this case?

Mr. HENKLE: Objected to for the reason that it is not competent for counsel to show witness a signature and ask if it resembles a signature which is not produced, so that the witness may be examined and cross-examined in reference to it; and I object to this testimony as irrelevant and incompetent.

A. No, sir; it did not.

WILFRED L. MOULTON.

Cross-examination waived.

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614 *Testimony for Defendants.*

No. 215 B STREET NORTHWEST,
WASHINGTON CITY, D. C., *March* 10, 1893.

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Samuel A. Peugh.

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Direct examination.

By Mr. HENKLE:

Q. What is your profession, Mr. Peugh?

A. Well, the honorable one of attorney-at-law.

Q. You are ill now and have been for some time?

A. Yes, sir; for some two weeks past.

Q. And you are now confined to your house, where we are present?

A. Yes, sir.

Q. You have heretofore been examined as a witness on behalf of the complainant in this case of Brown *vs.* Edwin A. McIntire and others?

A. Yes, sir.

Q. You were called to testify as to a signature of yours to Exhibit A. H. No. 1 in the Brown case, purporting to be a deed from Barbara Brown and Emma Taylor to Martha McIntire, bearing date the 25th of April, 1881, which I now hand you. Please state

whether you identify that as the deed to which your attention was called in your examination in behalf of the complainants in said cases.

A. I do not know that I identify the paper, but if it be——

Mr. HENKLE (interposing): It is, as matter of fact, the same paper.

A. (Continuing:) If it be, as matter of fact, the same paper, I identify my signature.

Q. Upon your examination on behalf of the complainant you were in some doubt as to whether you had made that signature as a witness or not. Will you please state whether you have made investigation since your examination and have reconsidered the matter and what the state of your mind now is as to that point?

A. I have made an examination, and state that my mind is now settled that this is my signature.

Q. You expressed some doubt, I believe, Mr. Peugh, chiefly on account of the name "Samuel" being written in full. Please state what the result of your examination into your signatures has been.

A. The result of my examination has been to satisfy me that the Samuel written there is my Samuel.

Q. Now, Mr. Peugh, there has been some question as to whether the signature of William Helmick, just above yours, as a subscribing witness, was the genuine signature of Mr. Helmick or not. Will you be kind enough to state whether you know that to be the signature of Mr. Helmick or not?

615

A. I have no more doubt of it than if I were to see him sitting before me.

Q. You and Mr. Helmick were friends for a great many years?

A. We were.

Q. Intimately—in business?

A. For twenty years.

Q. You knew his signature well?

A. Yes, sir; well.

Q. Can you recall whether you saw him make that signature or not?

A. I cannot now recall the fact of seeing him make the signature, but the fact is obvious to me that it — his signature, and that I made my signature at his suggestion; most likely in his office.

Q. Mr. Peugh, did you know Barbara Brown?

A. I knew her very well; she was a servant in our family when a young girl. I bought the property referred to in this deed, on Maryland avenue, through Chapman Lee, and I was her trustee.

Q. Conducting her business for her?

A. And attended to her business for her in all matters, where she desired me, of a sort of legal nature.

Q. Did you know her handwriting?

A. I would not say that I remember her handwriting.

Q. Do you remember seeing her sign that deed?

A. Well, I have no doubt, inferentially, that I would not have been a subscribing witness had I not seen her sign the deed.

Q. Did you know a lady by the name of Emma Taylor?
A. I did.
Q. Where did you know her and when?
A. Well, I knew her as the daughter of Barbara Brown.
Q. Who, Emma Taylor?
A. Emma Taylor. I regarded her as a daughter of Barbara Brown.
Q. Well, was she a daughter?
A. That was my impression.
Q. Where did you meet her?
A. Well, I can scarcely say, but I have met her.
Q. Did you meet her in Mr. Helmick's office?
A. I met her there.
Q. Do you know whether she signed that deed or not?
A. I have no doubt she signed it or I would not have witnessed it.
Q. Did you ever meet her at Mr. Helmick's office more than once?
A. Yes, sir; several times.
Q. Do you know whether Barbara Brown's property was sold before her death or not?
A. I so understood, and I had occasion, I might say, to know it, because she came to me for assistance.
616 Q. After her property had all been sold?
A. Yes, sir.

Mr. MACKEY: I object to any hearsay testimony.

Q. Mr. Peugh, did she or not make any complaints to you of Mr. McIntire ever having dealt unfairly with her or taken advantage of her?
A. Never. She told me that Mr. McIntire was helping her. She made complaints of Mr. John E. Kendall.
Q. But she spoke kindly of Mr. McIntire?
A. Yes, sir.
Q. Mr. McIntire suggests to me that he would like to know whether she would have been likely to complain to you if she had any complaints against him?
A. She always came to me with her troubles, or very frequently did. I advised her against making deeds of trust, and after she got out of her home she came to see me, and I always gave her advice beneficial to her if I could.

Mr. MACKEY: I object to the testimony of the witness as to alleged statements made by Barbara Brown during her lifetime.

Q. Mr. Peugh, after you had been examined on behalf of the complainant and had expressed doubts as to the genuineness of your signature as a witness to this deed, will you be kind enough to state whether after consideration of the matter you became dissatisfied about your testimony, and whether you spoke to me and expressed a desire to be recalled for the purpose of making corrections?

Mr. MACKEY: Question objected to as leading.

A. I did; if that answers the whole question.

Q. As that question is a little leading, I will ask you to go on; state what occurred.

A. I met Gen. Henkle and stated to him that after an examination of papers which I had made I became satisfied that I had made, possibly, an error in my testimony as to the word "Samuel," and then I expressed to him my desire to have an opportunity to correct that statement, and to express it emphatically that it was my signature.

Cross-examination.

By Mr. MACKEY:

Q. I understand you to say that you have no recollection of the fact of signing this deed (Exhibit A. H. No. 1 in the Brown case), but you simply identify this as your signature from the fact that it looks like your signature?

A. I identify it all over. I am clear in my mind about it.

Q. I know that; but do you remember the fact, the fact itself, of this transaction and the witnessing of the deed?

A. I cannot say positively that I do, but I do know the
617 fact that I witnessed the paper, and that it was done in the presence of the parties signing the same.

Q. But you do not remember the particular fact of signing this paper?

A. Well, my memory would be faint on that subject.

Q. Have you any memory at all about having signed this paper?

A. I could only say that I have a memory of witnessing papers for Barbara Brown; but as to the particular paper, the time is too long, fifteen years, for me to state positively as to that particular occasion.

Q. Now, you identify this signature as your signature from the fact that it looks exactly like yours?

A. Well, more than that; I would know it to be mine.

Q. How do you know it to be yours when you say you cannot remember the fact of having written it, and that you only judged it to be your signature from the fact that it looks like your signature?

A. Simply because I recognize you not looking like Gen. Henkle.

Q. And that is the only way you undertake to identify that signature, from the fact that it looks like and resembles your signatures as you usually made them?

A. I cannot at this length of time, twelve or fifteen years ago, remember the particular circumstances, while I do remember signing some papers in Judge Helmick's office in relation to Barbara Brown.

Q. That is all right; I understand that, but I mean this particular paper. You have stated that you have no recollection of signing it apart from the fact that your signature is upon the paper.

Now, I ask you if you have not identified this signature as yours simply from the fact that it resembles your signature, and strongly resembles your signature, if you like?

A. There are two circumstances: Judge Helmick's signature, which I recognize as a witness to that paper as I would his presence, and the fact that I signed it then and there is the most that I can recollect.

Q. Of course your signature appears under this alleged signature of Judge Helmick's, but you do not remember Judge Helmick writing that signature, do you?

A. Well, I think that would be rather too much for human memory.

Q. So that we come back to the point that your only means of identifying this signature are these two facts: First, that the signature, as you think, strongly resembles your signature; secondly, that there is above it a signature of William Helmick which you admit to be genuine, and the fact that you would not have put your signature below a forged signature of Mr. Helmick?

A. I do know that to be Judge Helmick's signature, and I do know that to be my signature.

Q. Now, Mr. Peugh, you understand the drift of my question. My question is directed to ascertaining your source of knowl-
618 edge and not your opinion. Now, you say that this signature of yours is your signature; you have also said that you have no recollection of the fact of signing it, but you nevertheless testify most positively that it is your signature. Now, I ask you if that testimony is not based solely upon the fact that it strongly resembles your signature——

A. (Interposing) I should say combination of circumstances.

Q. (Continuing:) Well, hold on. That it strongly resembles your signature and also because it is below a signature of Mr. Helmick which in your opinion you believe to be genuine?

A. Because I know that I would not have signed the paper under William Helmick if he had not been present to see me sign it.

Q. I know you would not sign your name under a forged signature if you knew it to be forged, and the only question is as to the extent of your knowledge as to the genuineness of the signature. I leave your testimony in regard to your signature as to your source of knowledge. I think that is sufficiently brought out. I will now ask you about Mr. Helmick's signature. Do you identify that signature from any other fact than the fact that it resembles Judge Helmick's signature, in your opinion?

A. The facts and circumstances make it clear to my mind that it could not have been otherwise.

Q. What facts and what circumstances, Mr. Peugh?

A. The fact of my signing under Judge Helmick must necessarily have been at his request.

Q. And that is the reason why you say that is Judge Helmick's signature?

A. And for the reason that I know the signature as well as I know my own face.

Q. And your opinion is that that is the genuine signature of Mr. Helmick?

Mr. HENKLE: He does not say that it is his opinion.

A. Beyond all human question.
Q. You did not see Judge Helmick write it?
A. I think more than probable.
Q. You do not remember seeing him write it?
A. No, sir; but it is much more than probable that I did.
Q. If it were his genuine signature, of course, and you signed there in Judge Helmick's office you undoubtedly saw Judge Helmick sign it?
A. It would be next to impossible for me to have witnessed a signature there, under those circumstances, with Judge Helmick personally, without knowing how it was all done.
Q. I know that; but are you not basing your testimony as to the genuineness of these two signatures simply upon the fact, in respect of Mr. Helmick's signature, of having seen him write frequently—that you are familiar with his signature—and with that knowledge, on an examination of this signature, you say that it is his?
619 A. I do it, because from the inherent nature of the circumstances it could not have been otherwise.
Q. And that, then, is all the answer you care to give to that question?
A. I think so.
Q. Mr. Peugh, do you pretend to be an expert in handwriting?
A. None whatever.
Q. Would it be possible to impose a signature upon you of a man whom you have known for a long time and had seen write?
A. I should be like the rest of human kind on that subject.
Q. Liable to be imposed upon by a forged signature?
A. Yes; of course; just like the rest of my fellow-men.
Q. Now, you say that Emma Taylor you knew well.
A. I do not say that I knew her well. I knew her.
Q. How long did you know her?
A. Probably since she was that high (indicating)—three or four feet high.
Q. How did you come to know her?
A. I could answer that about as well as to answer how I came to know Mr. Mackey.
Q. You knew her as the daughter of Barbara Brown?
A. She has often been to my office.
Q. Who?
A. Emma Taylor; when a little girl, up to womanhood.
Q. And from her visits to your office you derived the knowledge or idea, if you wish to have it, that she was a daughter of Barbara Brown?
A. I always so understood it.
Q. You understood it from whom?
A. I cannot say now from whom.
Q. Did Emma Taylor always reside in Washington?

A. I do not know.

Q. You say you knew — from the time she was a small child until she grew up to womanhood—about how old?

A. Fourteen or fifteen years.

Q. Well, after that what became of her?

A. I saw her occasionally.

Q. Only occasionally?

A. Yes, sir.

Q. In the city here?

A. Yes, sir; in the city here.

Q. When you saw her at Judge Helmick's office how old a woman was she?

A. I cannot now pretend to say.

Q. What I mean is was she over fourteen years of age?

A. I would not pretend to say anything about her age.

Mr. MACKEY: Of course, if I were to ask you whether a woman were twenty or forty years of age you would be able to state?

WITNESS: Do you ask me that question?

Q. Was she a woman twenty years of age?

A. You asked me if she was a woman of twenty or forty
620 years of age. I would not pretend to make any statement in regard to her age.

Q. I understood you to say that you knew her until she was about fourteen years of age?

A. I mean by that I presume she was about 13 or 14 or 15 years of age—that is, when we see a little girl growing up to womanhood we presume that she is about that age.

Q. Well, up to that time you saw her frequently?

A. I do not say frequently. I say I saw her occasionally.

Q. You say she came to your office?

A. Well, she did when a smaller child.

Q. She came to your office frequently. When I say frequently I do not mean every day; what I mean is, she only came twelve times a year or once or twice a month. I do not wish to be minute about it. From that little child up until she came to be fourteen years of age you saw her off and on?

A. I will not pretend to say fourteen or fifteen years of age, but a little girl and up.

Q. Until she got to some age, I suppose?

A. Those questions are too remote to go back.

Q. When you say you saw her at Judge Helmick's office you know whether she was a woman or child then?

A. I do.

Q. I understand you to say that you saw her more than once at Judge Helmick's office?

A. I think I did.

Q. She was then more than a child?

A. I will not pretend to answer that question, because I would not have signed a deed to a child.

Q. Then, of course, she must have been over twenty-one years of age?

A. I will not pretend to say what her age is. I simply pretend to state the facts that I have stated.

Q. Was she a woman of forty years of age?

A. I should say she was not.

Q. Do you know whether she was a woman thirty years of age?

A. I will not pretend to say, Mr. Mackey.

Q. You will not pretend to say that when you saw her at Judge Helmick's office she was twenty or thirty years of age?

EXAMINER (after a pause): What is your answer?

WITNESS: I have no answer to give to it.

Q. How did you recognize her as Emma Taylor at Judge Helmick's office?

A. I have no memory at this date.

Q. Well, how did you come to recognize her?

A. I have no memory at this date.

Q. Did you talk with her?

A. I have no memory at this date.

Q. How do you remember, then, the fact that you have seen her at Judge Helmick's office?

621 A. I think I have been over that quite steadily and it oppresses me.

Q. This Emma Taylor that you saw, can you describe her? What sort of a looking woman was she?

A. I would not pretend to describe her.

Q. Whether she was tall or short?

A. I would not pretend to describe her.

Q. Now, you say that Barbara Brown came to you and told you that Mr. McIntire was helping her. Do you remember when that was?

A. I have no remembrance at all upon such a subject; some circumstance would have to call up my memory of an occasion of which I have known.

Q. Mr. McIntire had loaned money to Barbara Brown, had he not?

A. I so understood it.

Q. Well, was that what she referred to when she said that Mr. McIntire was helping her?

A. I do not know now. Those are questions too removed and too wild and scattering.

Q. Have you had any conversation with Mr. McIntire since the taking of your former testimony in these cases?

A. I have.

Q. He called to see you, did he not?

A. He did.

Q. And you and he talked together over the matter?

A. We did.

Q. Now, you say in your testimony-in-chief, in response to Mr. Henkle, that after the matter had been called to your attention (I think those are the words) and after the examination of papers which you had made you found that you were in error in your former deposition. What papers were those which you examined?

A. Mr. McIntire discussed one single question, whether I witnessed the deed or whether that signature of mine was genuine or not, and that was the only question we talked about.

Q. He tried to convince you, of course, that it was a genuine signature?

A. I do not suppose he influenced me in any way. My own eyes and understanding were my guide. I do not think he undertook to be guilty of such an impropriety.

Q. That was the only paper that you examined?

A. I now do not remember in detail. It is too much detail for me to go into.

Q. There is a good deal of property involved in these cases and, of course, it is my business to know just what facts and circumstances made you change your mind since your former testimony as to your signature. Now, you say with a great deal of positiveness that this is your signature, and you say that you have made an examination of papers, and from the examination of the papers that you made you have become satisfied that this is your
622 signature. Now, I want to know, Mr. Peugh, and you will bear with me upon that point, what papers you did examine.

A. Right at the beginning you are putting words in my mouth. I did not say that was not my signature upon my former examination.

Q. You expressed a doubt about it, did you not?

A. I expressed a hesitancy about it.

Q. And now you express no hesitancy about it?

A. Yes.

Q. Well, is it the fact that you did not make any examination of papers since then?

A. I have not made such an answer.

Q. Will you please state how it is?

A. I did make an examination of papers. My examination was in my own memory of the facts and circumstances of the case more than anything else.

Q. You did not actually have papers?

A. I did have papers.

Q. What papers?

A. Some papers now in my files. I think I had letters in my letter book which showed the Samuel in my signature so distinct that, upon the whole, there was no mistake in my mind; no more doubt about it than I am sitting here; not a bit.

Q. So, then, your state of mind as to the genuineness of this signature of yours has been brought about by a comparison of it with other signatures of yours upon other papers?

A. The whole facts and circumstances of the examination, taken as a whole and consolidated into that one substantial fact, that it is my signature.

Q. Where did this Emma Taylor that you knew live?

A. I do not know anything more about it. I would not pretend to say that I never knew, for I may have and may not.

Q. When she was a little girl calling at your office did you know then whom she was living with?
A. I did not.
Q. Did she ever come here with anybody?
A. I do not remember, Mr. Mackey.
Q. Do you know whether she is the same Emma Taylor who signed this paper or not?
A. I would say she was.
Q. Why?
A. Simply because it would be impossible to say otherwise.
Q. Well, have you any facts which would justify you in saying that you think she is the same person whom you knew as Emma Taylor?
A. I cannot answer further on those questions. I am worn out and exhausted.

Mr. MACKEY: I am sorry. We will have to come again. I wanted to get through.

Mr. HENKLE: There is a limit to a cross-examination. The
623 witness has said over and over again and repeated the same thing. The questions are still repeated, and there ought to be a limit.

Mr. MACKEY: There will be a limit to it, but I do not understand that there is any statute of limitations in regard to it.

Q. Did you and Mr. McIntire ever talk about Emma Taylor when he (McIntire) was here?
A. I do not now remember the conversation we had on the subject.
Q. You do not remember?
A. I do not remember anything on the subject whatever or interviews about Emma Taylor except what is exhibited in those papers.
Q. Are you able to state now whether when Mr. McIntire called to see you in reference to this matter of your signature or at any time since you have given your testimony in these cases he talked with you about Emma Taylor or not?
A. Mentioning her name was talking about her. I think that is about the amount of it.
Q. Did you and he ever compare notes about her?
A. None in the world. I had no interest in the subject in the world.
Q. Did he undertake to tell you who Emma Taylor was?
A. I do not remember what he did.
Q. Did you talk with him about who you thought she was?
A. I do not remember that I did. I do not think I did.
Q. Are you able to state emphatically that you did not?
A. Why, I say I do not remember.
Q. How long ago was it that he called here?
A. I do not remember; he called here twice.
Q. On either of those occasions do you remember his having any conversation with you about Emma Taylor?

A. Simply the circumstance that was presented on that paper.

Q. Well, about the fact of your acquaintance with her or his acquaintance with her?

A. It was nothing of any interest to me at all. I have a vague memory in connection with it. All I cared to give my testimony in regard to it was as to the genuineness of my signature to those papers and the circumstances under which they were brought forward. All that interested me was to tell the truth as it existed in my understanding, and I have given the whole of it just as far as I can give it.

Redirect examination.

By Mr. HENKLE:

Q. Mr. Mackey has asked you, Mr. Peugh, whether Mr. McIntire did not call upon you in reference to your former testimony——

A. (Interposing.) Pardon me. I should have said that Mr. McIntire's call upon me were to fix the time when to take my testimony.

624 Q. I wanted to ask you whether you ever had any conversation with Mr. McIntire with regard to your testimony in this case until after you had called upon me and asked me to have you recalled for the purpose of making corrections in your testimony?

A. None that I know of.

Recross-examination.

By Mr. MACKEY:

Q. You say that Mr. McIntire called upon you for the purpose of fixing the time of taking your testimony. When was that?

A. It was this week and last week.

Q. He had called upon you before that?

A. I do not think he had.

Q. Did you have any conversation with him?

A. I do not think I had.

Q. Did you have any conversation with him at the time that he called to fix a time for taking your testimony?

A. I do not think I had any at all upon the subject except to correct what might give a false impression.

Q. That is, you talked about your signature to that paper?

WITNESS: I think I have answered.

Mr. MACKEY: It is easier to answer it than to talk about it.

A. I do not remember.

Q. You do not remember now whether he talked with you at any time about your signature to that paper?

A. I did not say that. I do remember. It has been a long time ago. We have had no conversation on the subject of anything about my testimony except as to the correctness of my signature to those papers.

Q. And that conversation, however, occurred a long time ago?
A. I have once stated that I talked with Mr. McIntire shortly after I gave my testimony, and I talked with Gen. Henkle; but we have had no conversation that I remember since then until his call upon me to know when it would suit to give my testimony.
Q. With whom did you talk first about the testimony you had given—with Mr. McIntire or Gen. Henkle?
A. I now do not remember which; but I do remember distinctly with Gen. Henkle.
Q. Do you remember distinctly with Mr. McIntire?
A. I remember the fact, and that is all I can remember at present. Most likely I did, as it would be natural that I did.

SAMUEL A. PEUGH.

Subscribed and sworn to before me this 10th day of March, 1893.

ALBERT HARPER, *Examiner.*

625 MAY 12, 1893.

* * * * * * *

Edwin A. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. Are you one of the defendants in this case?
A. I am.
Q. Your codefendants are Martha McIntire and Emma Taylor; Miss Martha McIntire is your sister?
A. Yes, sir.
Q. Do you know the complainant, Elizabeth Brown, in this case?
A. No; I cannot say that I do. I have seen her in the case, but that is all.
Q. Did you know Barbara Brown in her lifetime?
A. I did.
Q. When did your acquaintance with her begin and how?
A. Early in the '80's she called at my office and requested a loan on her property. She was introduced to me by Mr. Samuel A. Peugh.
Q. Did he bring her to your office?
A. I think he did.
Q. She wanted a loan on her property?
A. She wanted a loan on her property No. 1216 I street northwest, in this city.
Q. For what amount?
A. Four hundred dollars.
Q. Well, did you make the loan?
A. I did.
Q. For how much?
A. I made the deed of trust for four hundred dollars.
Q. Will you look at the paper which I now hand you and state whether or not that is the deed of trust?

A. This is the deed of trust under which the loan of four hundred dollars was made.

Mr. MACKEY: We do not dispute that the deed of trust and loan were made.

Mr. HENKLE: I here give this deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 3.)

Q. From whom did you obtain the money?

A. From my sister, Martha McIntire. The note, however, was made payable to the order of Richard R. Brouner, according to a custom among brokers.

Q. Who was he?

A. He was a friend of our family—a friend of mine, not of my family.

626 Q. Did he indorse the note?

A. He indorsed the note "without recourse."

Q. In blank?

A. Yes, sir.

Q. And your sister took it?

A. Yes, sir; I sold it to her.

Q. And she paid you the money?

A. Yes, sir.

Q. What did you do with the trust deed; did you deliver it to her?

A. Yes, sir. I think it was placed on record at the time I got the money from her, and then it was handed to her with the note.

Q. Where is the note?

A. It was surrendered to Barbara Brown.

Q. You have not it in your possession?

A. No, sir.

Q. Was the note paid at maturity?

A. No, sir; before the maturity of the note, the interest not being paid, the property was sold on the order of Martha McIntire for non-payment of interest.

Q. Will you look at the indorsement on the back of the deed of trust (Exhibit A. H. No. 3) and say whose indorsement that is?

A. This is signed by Martha McIntire, authorizing me, as trustee, to sell the property for non-payment of interest.

Q. Well, now, what did you do in pursuance of the direction?

A. The property was advertised and sold at public auction for four hundred dollars to Emma Taylor on the 1st of April, 1881.

Q. Who was the auctioneer?

A. Mr. J. T. Coldwell was the auctioneer.

Q. It was sold at public auction in front of the premises?

A. Yes, sir.

Q. Do you remember at what time of day?

A. It was in the afternoon. I have forgotten the exact hour.

Q. Mr. McIntire, were you present at the sale?

A. I was.

Q. Can you state the name of any other persons who were present?

A. My sister Emma was present. Mr. John E. Kendall was present; Mrs. Barbara Brown herself was present, and there were several parties present who lived around the neighborhood, but whose names I cannot recall.

Q. Was your sister Martha present?

A. No, sir.

Q. Is Mr. John E. Kendall living?

A. I do not think he is.

Q. Do you know how long he has been dead?

A. I do not.

Q. What interest, if any, had Mr. Kendall in that property?

A. He claimed on the day of sale to have an interest in the property, and he handed me a memorandum, which is there
627 among the papers (pinned to the papers there), on the day of sale, stating the amount of his claim.

Q. He claimed to have an interest in the property?

A. Yes, sir.

Q. What is the paper I now hand you?

A. This is the paper which Mr. Kendall handed me at that time; it is dated April 1, 1881, in his handwriting, and is signed by his initials, stating the amount of his claim against Barbara Brown, and he explained it to me, that there was between two and three hundred dollars due on this amount and requested me, as the trustee managing the sale, to pay over to him any surplus on this account.

Q. The amount on this paper is seven hundred and twelve dollars and thirty-eight cents ($712.38). Did he indicate that the balance of it had been paid?

A. He indicated that some part of it had been paid by sale of another piece of property of hers, upon which my sister also had a deed of trust; property at 13th and F streets, I think it is; however, the deed shows.

Q. And he notified you as trustee to withhold any balance there might be after paying your sister's note to be paid to him?

A. Yes, sir; and he gave me that memorandum showing his calculation.

Q. You say that he was present at the sale and gave you this memorandum at the time?

A. Yes, sir.

Q. Was there any surplus over and above the amount of the indebtedness?

A. There was not quite enough to pay my sister's note.

Q. So that Mr. Kendall got nothing upon it?

A. No, sir.

Q. Do you know whether Mr. Kendall had a deed of trust upon that property?

A. I am not certain about that. He had a trust on another piece of property of hers upon which my sister had a second trust. He either told me that he had a second trust on this property or else

that he had a claim upon it for the balance due him after the sale of the other property of Barbara Brown.

Mr. MACKEY: I object to the witness stating what Mr. Kendall told him.

Q. But there was no balance to pay him?

A. No, sir.

Q. You say that your sister Martha had another claim, another indebtedness due by Barbara Brown?

A. Yes, sir.

Q. Secured by deed of trust upon what?

A. Upon these premises No. 1216 I street N. E. and upon the other property which Barbara Brown also owned.

Q. Where was that?

A. The deed of trust is right there. I think it was at 13th and F streets northeast. I have forgotten the number of the square.

628 Mr. MACKEY: What is the relevancy of this testimony?

Mr. HENKLE: I claim that it is relevant to the issues of this case.

Mr. MACKEY: I object to it as irrelevant and tending to lengthen out the testimony to no purpose whatever. The only issue in this case is that there was no sale of this property.

Mr. HENKLE: I here give in evidence this scrap of paper from Mr. Kendall.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 4.)

WITNESS: That memorandum is in the handwriting of Mr. Kendall. I know his handwriting, and it was handed to me by him.

Mr. MACKEY: We object to the admission in evidence of that scrap of paper. If the witness could not state what Mr. Kendall said, he cannot put in evidence a paper containing written statements of Mr. Kendall. It is objected to as irrelevant and incompetent.

Q. Look at the paper which I now hand you and state whether that is the deed of trust to which you refer.

A. This is the deed of trust to secure six hundred dollars, the note being held by Martha McIntire.

Q. The deed of trust was made by whom?

A. It is made by Barbara Brown and by Samuel A. Peugh, who was her trustee in one of these pieces of property. He was her trustee for one of the properties recited there, but not for this property No. 1216 I street northeast.

Q. This deed of trust was made by him as her trustee and by herself in person?

A. Yes, sir.

Mr. HENKLE: I here give this deed of trust in evidence.

Mr. MACKEY: The admission of which we object as incompetent and irrelevant.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 5.)

WITNESS: The six-hundred-dollar note secured by that trust is still in the hands of Martha McIntire unsatisfied.

Q. Was the other property sold?

A. The other property mentioned in this deed of trust was sold by Mr. Kendall previous to the sale of the I Street property under his trust, which was a prior trust.

Q. Do you know whether your sister Martha realized anything from that sale?

A. She never realized a cent from it.

Q. What was that trust for?

WITNESS: The trust to her?

Mr. HENKLE: Yes.

A. For money loaned to Barbara Brown.

Q. Now, Mr. McIntire, I hold in my hand a newspaper cutting or slip which I pass to you and ask you to look at and tell me what it is.

620 A. This is a slip cut from the Evening Star in 1881, containing a notice of real-estate sales, stating, among other things, that E. A. McIntire had sold for B. Brown 1216 I street northeast for $600.

Q. Well, what does that refer to?

A. That refers to this property.

Mr. BOARMAN: Is that the advertisement of sale under the deed of trust?

Mr. MACKEY: No; somebody went and got that stuck in the Star.

Mr. BOARMAN: That was put in after the sale.

Mr. HENKLE: Yes; and I here give it in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 6.)

Mr. MACKEY: Solicitors for the complainant object to this paper being offered in evidence, and they desire to state here that they will call the attention of the court to the wilful and intentional offer on the part of counsel for the defendants of what he must know, as a member of this bar, is utterly incompetent testimony for any purpose, and, further, that it is trifling with the court and trifling with the solemnity of a judicial proceeding and almost an insult to the intelligence of the court.

Q. Who did you say bid off the property?

A. Emma Taylor.

Q. What was the amount?

A. Four hundred dollars.

Q. Mr. McIntire, was a deed made in pursuance of this sale to anybody?

A. Yes, sir; a deed was made to Emma Taylor.

Q. By whom?

A. By me as trustee.

Q. When was the deed made?

A. On or about the date of the sale.

Q. Do you know where that deed is?

A. I thought it was offered in evidence here, but I am not certain.

Q. Was it delivered to Miss Taylor?

A. Yes, sir.

Q. Did she pay you the money?

A. No, sir; she assigned her purchase immediately to Martha McIntire.

Q. How did she come to do that?

A. On account of this deed, shown here today, for six hundred dollars. I reported to her that my sister, Martha McIntire, had another deed of trust—a second deed of trust—upon that property and another property, which I learned on the day of the sale had been cut out by a sale under a previous trust, and I showed her that if she took the property Martha would lose one thousand dollars or in that neighborhood, and she kindly consented to assign her purchase to my sister Martha, and then my sister Martha sur-
630 rendered the note to Barbara Brown, who joined in the deed. The deed is in evidence here.

Q. Was the deed which you had made to Emma Taylor placed on record?

A. Yes, sir; I do not know whether it was placed on record at the time of this transaction—at the time of the assignment—but about that time.

Q. Is it in evidence in this case?

A. I think it is, but I am not positive.

Mr. MACKEY: I think it is in evidence; if not, either party may be at liberty to file a certified copy of the record of it.

Q. How did Barbara Brown come to make that deed herself; join in that deed with Emma Taylor to your sister?

A. Well, the question arose as to the right to claim any amount from the city on account of the lowering the streets there and the possibility of drawbacks, and about that time I was in the habit, when making deeds to different parties, of always embracing that in the deed, and, as it had not been in the original deed of trust, the suggestion was made by me to have a deed from her covering the right to claim from the city government damages or drawbacks, and she agreed to sign such a deed upon the payment of a small amount of money, which was paid her—I think in the neighborhood of one hundred dollars. The deed conveys the property and also her right to claim drawbacks or damages from the city for cutting down the street.

Mr. MACKEY: Objected to. The deed will show what is conveys.

Mr. HENKLE: We have not the deed here. I simply wanted to identify it, that is all.

Q. What kind of property was this?

A. It was a two-story house, in very bad condition, some twelve or fifteen feet above grade, and had none of the improvements at all.

Q. How did Barbara Brown and Emma Taylor come to join in that deed?

A. My intention was originally to make two separate deeds, one from Barbara Brown and one from Emma Taylor. I prepared one from Barbara Brown, intending to have her sign it. When I went into Judge Helmick's office I met them there, and, at Judge Helmick's suggestion, I incorporated the two names in one deed, finishing the deed in his office. He desired to go out somewhere, and he was in a hurry and would not wait until I wrote another deed, and that addition was made and was signed and acknowledged by both of them.

Q. Did your sister pay this one hundred dollars, or whatever the sum was, to Barbara Brown?

A. Yes, sir.

Q. Was this property subsequently conveyed by Emma Taylor to your sister Martha?

A. Yes, sir; some few years afterwards, and when Martha was about buying from Emma Taylor what is known as the
631 Ackerman property and the Eller property, that was embraced in the deed from Emma Taylor, and the consideration was made eighteen hundred dollars, the amount of six hundred being for each house, and this property was put in at six hundred dollars.

Q. The former deed had not then been placed upon record?

A. I think that was the trouble.

Q. Do you know why it had not been put upon record?

A. Through the carelessness and ignorance on the part of my sister.

Q. You are charged with being the real owner of that property. What do you say to that?

A. I never had a cent's worth of interest in it. All the money was paid by my sister Martha. All I have received in any shape from the property, from anybody, was the commission I got from Barbara Brown when I originally made the loan. Since the sale Martha McIntire has received the rents and paid the taxes and kept the property in repair. I received no benefit at all from it and claim none.

Q. What is the paper which I now hand you?

A. This is a letter, dated Washington, D. C., April 26, 1891, signed by H. B. Moulton and asking me to call at his office at my earliest convenience, as he would like to see me in relation to a matter of importance.

Mr. HENKLE: I here give the letter, with the envelope, in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 7.)

Mr. MACKEY: Objected to as being manifestly incompetent and for the reason heretofore stated in reference to the offer of the newspaper slip.

Q. After you got that letter what did you do with it?

A. I called upon Mr. Moulton at his office, and he asked me in reference to this suit of Elizabeth Brown. He expressed surprise

that the suit had been instituted, and he said that he was attorney of Elizabeth Brown, and that Mr. Mackey had filed the suit without the authority of Miss Brown.

Mr. MACKEY: I object to the witness stating what he was told by a third party, out of the presence of the complainant, as incompetent and irrelevant.

WITNESS: He said that Mr. Mackey had paid the fee himself, and that Elizabeth Brown knew nothing at all about the institution of the suit, and he reminded me that he was the counsel for Elizabeth Brown and had no intention of filing such a suit, and he called my attention particularly to the fact that the bill was not sworn to, and intimated that it amounted to nothing.

Q. Who lived in the house 1216 I street northeast at the time of the sale?

A. I'm not positive who lived there at the time of the sale.

Q. When did Mrs. Brown live there?

632 A. She lived there somewhere about that time, but she had received several notices to quit.

Q. When did she get notice to quit?

A. I made a memorandum of the dates there.

Q. The 10th of December, 1880?

A. That is one of the times.

Q. June, 1881?

A. That is another time. I think there was another time.

Q. For what length of time was it that she did not pay rent?

A. She was behind several months.

Q. Your memorandum shows from March 11, 1881, to April, 1881.

A. Yes, sir; that is the length of time.

Q. In her testimony Mrs. Browning said that the house was a frame house. What is it?

A. It is not a frame house; it is a brick house.

Q. Will you state what you desire to say about Mrs. Esselhorts?

A. She lived at No. 1212 I street northeast. I had charge of that house. It belonged to a child for whom I was guardian. Mrs. Esselhorts was not a tenant at all in this house at the time of the sale; the house was vacant.

Q. She testified that she was there.

A. She was not there at all. She was a tenant before that time, and she left previous to March, 1881.

Q. You say that she could not have been there at that time?

A. No, sir; I am positive she was not there, because I had the key in my pocket and engaged workmen to do work on the premises.

Q. What have you to say as to the testimony of Alice Burgess?

A. She lived next door to a house for which I am agent—No. 815 13th street northeast. The property belonged to my borther.

Q. She testifies that a sale did not take place there at that time.

A. It is a matter of impossibility for her to see the house. She lived a square and a half from the premises. She swears that there

was no flag there, but it was impossible for her to see from her house whether there was any flag there or not. I know that positively, because I am agent for the next house.

Q. Was it around the corner?

A. Yes, sir; around the corner from there, and there were several obstructions between her house and that house.

Q. You say that from her house she could not see the place?

A. It is a physical impossibility.

Q. Did you settle with Mr. Coldwell, the auctioneer, for making this sale?

A. Yes, sir; I did. The bill was filed in the Hayne case as Exhibit No. 22. The bill and receipt covered the expenses of the auctioneer in the Hayne case and in this case and in two or three others that I had at that time.

Q. What have you to say about the testimony of Mr. Frizzell in this case?

633 A. Mr. Frizzell built some property immediately to the east of this property (No. 1216 I street northeast). When he erected his houses there he destroyed the water pipes of these premises. I threatened to sue him for damages and he became quite indignant over it. Subsequently he found a leakage in his cellar from the sewer of premises No. 1216 I street northeast, and he had the health officer bring the matter before the police court. When I was on the stand at the police court I was forced to divulge the name of the owner of the property, and I stated then and there that the owner was Martha McIntire. I hesitated about giving her name because I did not want her to be pursued by Mr. Frizzell. Mr. Frizzell says that I told him that the property belonged to Emma Taylor. I did no such thing. He told me himself that he examined the records and found the property was in the name of Emma Taylor, and that he was told that she was at the "Frederick."

Q. Did you tell him that?

A. No, sir; I did not know anything about the "Frederick."

Q. Is there anything else you wish to say in this case?

A. Not that I can think of just now.

Mr. MACKEY: You have not asked him whether he advertised the property?

Q. Did you advertise the property for sale?

A. Yes, sir; it was advertised for sale. The auctioneer advertised it in the daily papers. I have been unable lately to find the old files, else I should have produced the copy here. We advertised either in the Star or the Critic or the Post, or, if the Chronicle was in existence then, we advertised in the Chronicle, or, if the Nation was in existence, we may have advertised in the Nation. Mr. Brisban Walker was the publisher of the Nation, in the Warner building, and we frequently gave him advertisements for the rent, and then the paper was published on 10th street between D and E or E and F streets, and we frequently gave him advertisements. I have hunted pretty diligently for the old files, but I cannot find any of the old papers at all.

Q. Was there more than one bid upon the property at that sale?

A. Yes, sir; there were several bids there.

Q. Do you remember any of the bidders?

A. I do not remember specially any of the bidders. I can state that I never allowed, as trustee, property to be knocked down without more than two bidders.

Q. Were there any fictitious bidders?

A. That I could not say. I have no knowledge of any.

Q. Not with your knowledge or procurement?

A. None at all.

Q. So far as you know, I want to know whether the sale was honest and *bona fide*.

A. It was, in everything that I am aware of. The advertisement was read there at the sale, the flag was there, the bell was rung, and the property was cried in the usual style. There were quite
634 a number of persons there, and the property was knocked down to the highest bidder, and there were several bidders.

Q. You say that Barbara Brown was at the sale?

A. Yes, sir.

Q. Did you have any conversation with her, that you remember, at the time of the sale?

A. Yes; I was pretty intimate with her at the time; at least, I went to see her at the time. I told her what I proposed to do. When the sale took place I am pretty positive that I had notice from her that she would consent. I remember in several instances having such a paper as that.

Q. Did you have any conversation with her at the time of the sale?

A. I talked with her generally. I do not remember anything special.

Q. Did she express any dissatisfaction?

A. No; she said that she could not help herself; could not pay the interest on the note; that she had no way of meeting it at all, and that she knew the property would have to go some time. She asked the auctioneer to try to get enough on the property so as to realize something for her. She was quite crestfallen when I told her that Mr. Kendall had handed me that paper, claiming any balance.

Q. Did she deny her indebtedness to Mr. Kendall?

A. No, sir; but she never thought that Mr. Kendall treated her right.

Q. Did you see her after the sale?

A. Yes, sir.

Q. Where?

A. At her house; afterwards at Judge Helmick's office, and she has been to my house also.

Q. Did she ever express any dissatisfaction with the sale?

A. Not at all. She expressed sorrow, of course, at the loss of the property. She charged her husband with being the cause of it all.

Q. Was her husband then living?

A. No, sir; he had been a drinking man and died previous to that—a very unfortunate case. I tried in every way to help the woman. I gave her work to do and she worked for me and for my family.

Q. Since that sale?

A. Yes, sir; I think Mr. Peugh testified to that; at least, Mr. Peugh knew about it.

Q. Do you know when she died?

A. No, sir; I do not.

Q. The note, you say, was surrendered to her after the sale?

A. After the sale. When the deed was made from Emma Taylor and Barbara Brown to Martha McIntire, then the four-hundred-dollar note was surrendered to Mrs. Brown in the presence of Mr. Peugh and Mr. Helmick, and, I think, Mr. Harleston also. There
635 were three witnesses there. It was done in Mr. Helmick's office—the surrendering of the note and the payment of the amount.

Q. Do you know where your sister Martha kept her deed?

A. Well, I only know from what she says. Previous to her having a box in the safe-deposit company she had a package in my safe. I did not know what the package contained, but I knew it was something of hers.

Q. Has your sister's possession and control of the property since the purchase been open and notorious?

A. I think so. There has been no desire on her part that I know of, and certainly none on my part, to keep it a secret. She has been to the premises often.

Q. She has rented the property and collected the rents?

A. The rents are collected by me as her agent. She has been to the property frequently, and the tenants have known her.

Q. And you say that there was nothing irregular or fraudulent or advantage taken of Barbara Brown in any of the proceedings?

A. Not the slightest, that I am aware of, in the world.

Q. Now, do you think of anything else you want to say in this case?

A. Not just now.

Mr. HENKLE: I desire to incorporate upon the record in this case the deposition of Mr. Samuel A. Peugh.

(NOTE.—It is agreed that the deposition of Mr. Peugh, as taken in the case of Pryor, may be read in this case and considered as taken herein, and that either party may read the testimony of any of the witnesses in these several cases, so far as relevant to the issues raised in this case.)

(Adjourned.)

MAY 29, *29*, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who deposes and says, being recalled for further direct examination:

By Mr. HENKLE:

Q. Mrs. Esselhorst, a witness on the part of the complainant, testified in this case that she was living at number 1212 I street northeast at the time of the sale of the property No. 1216 I street northeast—the Barbara Brown property—and that the sale did not take place on that day; that it could nor have taken place on that day without her knowing it, as she was within two doors of it and must have known it if it had taken place. Now, I want to ask you whether Mrs. Esselhorst lived at No. 1212 I street northeast at the time that sale was made.

A. She did not. She had moved from there nearly a month before the sale took place. I know it positively because she was a tenant of mine in the house which she occupied, No. 1212 I street northeast. I was agent of that property for a little girl for whom I was guardian.

636 Q. And did you rent that house to her?

A. I rented the property to her and knew as a positive fact that she moved out from there previous to the sale.

Q. What is the paper which I now hand you?

A. This is the agreement that I had with Ernest M. Esselhorst——

Q. (Interposing.) Her husband?

A. That is her husband.

Q. For the renting of that property?

A. Yes, sir.

Mr. HENKLE: I here give this paper in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 8.)

Q. On the back of this paper I see indorsed in pencil "Moved M'ch 21, '81." What does that mean?

Mr. MACKEY: I object to that because indorsements cannot be made upon a paper in that way to bind any one, especially the parties in this suit who had nothing to — with it.

A. The memorandum in ink was made by Mr. Zeverly, then a clerk in my office, and it was afterwards made by me in pencil; also the memorandum there that notice had been served upon her.

Mr. HENKLE: I here give in evidence both of these memoranda indorsed on the back of that paper (Exhibit A. H. No. 8), the one in pencil and the other in ink.

Q. You say the one written in ink was made by whom?

A. By Mr. Zeverly.

Q. Who was he?

A. A clerk in my office.

Q. When were those indorsements made?

A. About that time, within a day or so of that time. I think that indorsement was made on the very day—in fact, I know it was, because that was the custom.

Q. I want to ask you if you know, and, if so, how, that she did move out of the house at that time, to wit, March 21, 1881.

A. I know it from the fact that when I went to attend to sale I put some additional tacks on the card for rent on that house, No. 1212 I street northeast.

Q. It was then vacant?

A. Yes, sir.

Q. Do you know where she was living at the time of the sale?

A. I do not know.

Q. The sale took place when?

A. On April 1st, 1881.

Q. Mrs. Browning has testified that she was living in this house, No. 1216 I street northeast, known as the Barbara Brown house, at the time of the sale. Was she living there, as matter of fact, at that time?

A. I believe she was.

637 Q. I want to ask you whether you as agent turned the Brownings out of that property.

A. I am not positive whether writs of restitution were issued, but I had two judgments for possession, judgments in suits against the Brownings for non-payment of the rent.

Q. Mr. McIntire, you have testified that you were authorized by Mrs. Brown to procure the loan for her upon this property, No. 1216 I street northeast. Was that authority verbal or in writing?

A. It was in writing.

Q. Look at the paper which I now hand you and state what it is.

A. This is the written authority of Mrs. Barbara Brown for me to negotiate the loan of four hundred dollars upon her premises.

Q. Is that her signature?

A. That is her signature.

Q. Was that delivered to you?

A. Yes, sir.

Q. By her?

A. By her.

Q. And upon that authority you acted and procured the loan?

A. I did.

Q. Where does this paper come from?

A. I found it among some old papers in my safe.

Q. When did you find it?

A. This morning.

Mr. HENKLE: I here give this paper in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 9.)

Q. Mr. McIntire, I want to know whether you have sought for

the advertisement for the sale of this property, No. 1216 I street northeast; and, if so, whether you have found it or not.

A. I made a pretty thorough search, as I thought, before my testimony was given several days ago. Since that time I have been to all the newspaper offices, but I have been unable to find any files of that year at the Star or the Republican (the Republican is not — existence now) or in the Post or in any of the newspaper offices. In the office of the Post they referred me to the night editor. I went over there at 11 o'clock at night, which they told me — the earliest hour I could meet him; he referred me to another officer in the building, who got out the files previous to 1881; he must have, I think, gone back four or five years of that date, but it could not be found; he referred me to another man in the building, who told me that I might find it in among the files of newspapers at the office of the United States district attorney——

Mr. MACKEY (interposing): I object to what was told the witness by these people.

WITNESS (continuing): I came down next day to the district attorney's office and made search there, but I could find no
638 files for that year, and I have been unable to find any of the files for the year 1881.

Q. Who caused the advertisements to be inserted?

A. Mr. Coldwell, according to custom. My custom was to write the advertisements and hand them to him when he was the auctioneer, and after his death I continued to do so with other auctioneers.

Mr. HENKLE: I am through with my direct examination of Mr. McIntire, but I desire Mr. Mackey to defer his cross-examination until I can put upon the stand Miss Emma T. McIntire, who is now present, and examine her, as she desires to get away.

Emma T. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. I want to know whether you were present, in the spring of 1881, at the sale of house No. 1216 I street northeast, in this city.

A. Yes, sir.

Q. How did you happen to be present at that sale?

A. I was staying at my brother's house and he spoke of this sale that he was trustee of, and I, not being accustomed to seeing sales in front of any property, I wanted to go, and besides my sister was interested in that property.

Q. Well, did you go with him to the sale?

A. I went with him in his buggy to the sale.

Q. Well, now, did you see the sale made—hear it made?

A. Yes, sir; I saw the auctioneer.

Q. Did you hear him cry the sale?

A. Yes, sir; I heard him cry the sale and several people were there——

Mr. MACKEY (interposing): Do not lead your witness.

WITNESS (continuing): Several people bid at the sale.

Q. Did you hear this property knocked down; and, if so, to whom?

A. Yes, sir; to Miss Emma Taylor; I saw her with the auctioneer and my brother talking together afterwards, and I judged they were talking about the purchase-money.

Q. Do *you* not say anything that you do not know. They were conferring together after the sale?

A. Yes, sir.

Q. How did you know it was Miss Emma Taylor?

A. My brother introduced me to her.

Q. Did you have any conversation with her?

A. No, sir; I did not think I did at that time.

Q. Did you meet her afterwards?

A. I met her several times in my brother's office.

639 Q. Subsequently?

A. Subsequently.

Q. Well, what makes you remember the locality of that house?

A. I lived in that neighborhood when I moved to Washington and my brother owned a house in that neighborhood—my other brother, who is now dead—and my sister was interested in that property at that time—my sister Martha.

Q. Well, do you know whether your brother had any interest in any way in a house very near to this at that time?

A. Yes, sir; I remember he was guardian for a little girl.

Q. Who owned a house where?

A. Few doors from this same place, No. 1216 I street northeast; it may have been next door; it was near there.

Q. State whether this sale made any impression on your mind.

A. Yes, sir; because it was the only sale I had ever seen at that time in front of any property—in front of a private residence—not being accustomed to seeing it in Philadelphia.

Q. Where did you live at that time?

A. In Philadelphia.

Q. How soon afterwards did you move to Washington, if you did at all?

A. About a year afterwards.

Q. Have you subsequently attended sales of property?

A. Yes, sir; quite a number of sales since I came here, and I have been trustee in several cases.

Cross-examination.

By Mr. MACKEY:

Q. What other sales were you ever present at which your brother had?

A. 25th and I streets.

Q. That was the sale of what is called the Southey property?

Mr. McINTIRE: No; 25th street, she said. No. 2510 I street she refers to.

A. No, sir; it was not the Southey property.
Q. You were at a sale of 25th and I streets?
A. Yes, sir.
Q. That you remember distinctly, do you?
A. Yes, sir.
Q. Then you said that you were at another sale?
A. I have been at several sales.
Q. You have been at several sales of your brother?
A. I have been at several sales.
Q. I mean sales made by your brother as trustee?
A. Yes, sir; I have been at several sales made by him.
Q. Was this sale at 25th and I streets a sale made by your brother as trustee?
A. I think he was trustee.
640 Q. Well, what other sale made by your brother as trustee were you ever present at?
A. I am not certain about the time he was trustee, but I was at a sale he had something to do with.
Q. Well, sales he had something to do with.
A. No. 916 E street southwest, in this city.
Q. That is what is known as the Hayne property?

Mr. McINTIRE: Yes.

A. Yes, sir.
Q. That you remember being at?
A. Yes, sir.
Q. Do you remember any other?
A. Yes, sir; 6th and B streets northeast.
Mr. McINTIRE: No. 205 6th street northeast?
WITNESS: No. 205 6th street northeast.
Q. How long ago was that?
A. Several years ago.
Q. Well, several years ago may mean two or three or 15 years ago; what do you mean by that?
A. It may be four years ago.
Q. Do you remember any other?
A. I cannot recall any other just at this minute. I have been at several sales that he had nothing to do with.
Q. About this particular sale we are speaking of, the sale of the Barbara Brown property, you say that you were present and saw Emma Taylor bid upon the property?
A. Yes, sir.
Q. Did you see anybody else bid upon the property?
A. I saw them nod their heads. I call that bidding.
Q. To the auctioneer?
A. Yes, sir.
Q. How many people nodded their heads to the auctioneer?

A. I could not tell you that now.
Q. Were there two or three or four?
A. I could not recollect that now. I was a stranger in the city at the time.
Q. Was there more than one besides Emma Taylor?
A. Yes, sir.
Q. More than two?
A. There may have been a half a dozen.
Q. Was the bidding pretty warm and lively?
A. I have an indistinct remembrance about that.
Q. Well, you say you have an indistinct remembrance about it; what is your remembrance about it?
A. That I was there; that the sale took place, and that I was a stranger in the city, and it was something new for me to hear an auctioneer crying in front of the property.
Q. I am asking you whether the bidding was lively or not. Do you know what I mean?
641 A. I know what you mean now. I do not know that I knew then.
Q. Do you remember whether it was so or not?
A. I have an indistinct remembrance about it.
Q. What is that remembrance of it, indistinct or not, that it was lively or not?
A. It would be pretty much guess-work if I were to give you my indistinct remembrance of it.

WITNESS: Do you want me to guess?
Mr. MACKEY: Not at all. If you have any remembrance about it I want to know what it is.
WITNESS: I said that I had an indistinct remembrance about —.

Q. You say that there might have been five or six bidders?
A. Yes, sir.
Q. Did your brother introduce you to Emma Taylor there?
A. Yes, sir.
Q. What caused your brother to introduce you to Emma Taylor there?
A. Because I was with him and he was talking to her.
Q. Where were you?
A. I was in the buggy.
Q. What cause had he to bring her up to you and introduce her to you?
A. She may have come up to him while he was sitting in the buggy. He was talking to the auctioneer on the pavement sometimes, talking to Emma Taylor sometimes, and he was in the buggy sometimes.
Q. He got out of the buggy?
A. He got in and out during the sale.
Q. What did he introduce her to you for?
A. Because I was his sister and he knew her.
Q. Did he know her intimately?
A. I do not understand you.

Q. Was it a mere business acquaintance or had he known her?
A. He took off his hat to her. I do not know anything more than that.
Q. Well, a gentleman generally takes off his hat to a lady; what did he talk about with her?
A. About the property.
Q. What was said?
A. I do not remember now.
Q. You say that you saw her several times after that at your brother's office?
A. Yes, sir.
Q. What was she doing at your brother's office?
A. She was there about business.
Q. What were you doing in your brother's office?
A. I was there as a clerk.
Q. Then, that was some time after the sale that you saw her there?
642 A. That was a year after the sale.
Q. You saw her several times at your brother's office?
A. Yes, sir.
Q. And she came there to talk about business?
A. Yes, sir.
Q. Do you remember what the business was?
A. No, sir; because I never interfered nor listened.
Q. You were your brother's clerk?
A. Yes, sir; but I was there as clerk to attend to business and not to listen to private business affairs.
Q. What were your duties as clerk?
A. To attend to some of the books and to answer some of the clients' questions.
Q. What books did you attend to?
A. Different books.
Q. What kinds of books—rent books, sales books, or what?
A. Rent books.
Q. And sales books?
A. Memorandum books.
Q. Memorandum of what?
A. Of people coming in and wanting property or wanting to have notice when property was for sale or rent.
Q. How long were you in your brother's office as clerk?
A. About seven years.
Q. That was from 1882 to 1889?
A. About that time.
Q. How often did you see Emma Taylor at your brother's office during that period?
A. About two or three or four times.
Q. When was that?
A. When I was clerk.
Q. I mean during what part of your clerkship?
A. In the early part.
Q. In 1882 or 1883?

A. I do not know the year.

Q. Well, after you had been a clerk there about a year or so, I suppose?

A. It was after I had been there a while.

Q. When you were a clerk there, making memoranda of sales and rentals, did you make any entries in respect to Emma Taylor?

A. I did not have anything to do with the sales.

Q. Well, as to inquiries for property, did you make any memoranda in respect to her?

A. I made memoranda of strangers in the office.

Q. You mean of strangers coming into the office?

A. Of people who did not come there often and did not know my brother.

Q. You say that you kept the rent accounts. Did you have any rent account for your sister Martha?

A. I did not say that I kept the rent accounts. I said that I had access to the books and had something to do with the books.

643 Q. You had access to the books?

A. Not the books locked up in the safe.

Q. Well, the books not locked up in the safe?

A. Yes, sir.

Q. But the particular books you kept—you say that you kept certain books or had charge of certain books. I understand you to say that they were the rent book and book of memoranda of persons inquiring for property. Am I correct about that?

A. I did not have charge of the rent book.

Q. What book did you have charge of?

A. Several little books. I had access to the rent books, I said.

Q. What occasion did you have to go to the rent book if you had nothing to do with the collection of the rents or the keeping account of the rents?

A. Well, if any one would come in while Mr. McIntire was out and wanted to know if a tenant had paid the rent, I would have access to the book.

Q. Dou — remember, in looking over that book, seeing any rent account of Martha McIntire?

A. She never rented from him.

Q. No; but of rents received from the houses for her?

A. I suppose I could. I did not trouble myself to look at that.

Q. Do you remember ever seeing anything of that sort?

A. Yes, sir.

Q. There was, then, a regular rent account kept with Martha McIntire?

A. Yes, sir.

Q. Was there any rent account kept with Emma Taylor?

A. I do not recollect.

Q. You never saw her name on the books?

A. I do not recollect now.

Q. Was your sister, Martha McIntire, in the city of Washington when this sale of Barbara Brown's property was made?

A. No; I believe not.

Q. You were here and she was in Philadelphia?
A. I was here.
Q. And she was in Philadelphia?
A. I suppose she was.
Q. You had both been living there?
A. Yes, sir.
Q. You were visiting here?
A. Yes, sir.
Q. You left her in Philadelphia, did you not? When you left Philadelphia to come here—that is, when you came here on a visit to your brother—you left your sister, Martha McIntire, in Philadelphia?
A. My recollection is not very distinct on that point just now.
Q. How long did you stay here on that visit?
A. Oh, a few days.
Q. You went back?
644 A. I went back home afterwards.
Q. And you found your sister there?
A. I do not recollect. I may have.
Q. How long after that was it before you moved to Washington?
A. A little over a year, I believe.
Q. She and you moved here together?
A. We moved at the same time.
Q. What sort of a woman was this Emma Taylor; was she tall or short, or of medium height?
A. Medium size.
Q. Describe her appearance as best you can.
A. She had brown hair and was of medium size.
Q. How old was she?
A. Between twenty-five and thirty-five.
Q. Was she not older than that?
A. I do not know.
Q. I believe you answered that question before, that she was between twenty-five and thirty-five. Can you not come nearer than within ten years of a woman's age?
A. I cannot come any nearer now. I have not seen her since.
Q. Notwithstanding you had seen her three or four times after the occasion of the sale of the Barbara Brown property, you cannot describe her any more particularly than that?
A. Not now, as it has been so long ago.

EMMA T. McINTIRE.

* * * * * * *

EDWIN A. MCINTIRE further deposes and says, being recalled for—

Cross-examination.

By Mr. MACKEY:

Q. Who wrote those words, "Moved March 21, '81" (and something else there which is blotted out), on this Exhibit A. H. No. 8, being the agreement of lease to Esselhorst?

A. I stated that the memorandum in ink was made by my clerk, Mr. Zeverly, and I made the memorandum in pencil.

Q. In whose handwriting is this lease?

WITNESS: Let me see it.

Mr. MACKEY: Here it is.

A. I do not remember. I do not identify the handwriting.

Q. I see "H. Z." at the bottom. Whose initials are those?

A. Howard Zeverly.

Q. Are those his initials?

A. Yes.

Q. Is Howard Zeverly living now?

A. I think he is. I have been trying to have him as a witness in this case. The last I learned of him was that he had shipped before the mast in the Pacific ocean. He is a very important witness.

Q. Are those his initials?

A. Yes.

645 Q. Did he make that in his handwriting?

A. I do not know his handwriting well enough to say positively.

Q. You did not make that?

A. No.

Q. Who else could have made that but Howard Zeverly himself?

A. Mr. Atkinson could have made it.

Q. What does that "H. Z." there signify? I know that it signifies Howard Zeverly, but what else does it signify?

A. That he was the one who ascertained that the house was empty.

Q. Was not that put on at the time the lease was drawn?

A. No, sir.

Q. I mean those initials "H. Z."

A. No, sir.

Q. Is not "H. Z." in the same handwriting as "E. L. Esselhorst" on the back of that agreement?

A. I could not say.

Q. Is it not in the same ink?

A. No, sir; it does not look so to me. It looks like red ink.

Q. You say that looks like red ink?

A. Yes; I know that signature was not put on there when the agreement was first written. The initials on the back of agreement mean that the person whose in-tials they are ascertained the fact following these initials.

Q. The memorandum "Moved March 21, '81," was put there by Howard Zeverly, and that you know because you saw him do it?

A. I did not say that.

Q. How do you know that it was put there by Howard Zeverly?

A. I know that it was reported by him; if he did not put it there the fact was credited to him as having ascertained — fact.

Q. Then those in-tials were made by him?

A. I said a while ago that they resembled his, but I am not pos-

itive—that is, I presume they were his in-tials written by him, but I am not positive.

Q. Who wrote the words "Moved March 21, '81"?

A. I presume he did; but you asked me who else could have written them and I answered you that.

Q. This paper (Exhibit A. H. No. 9) signed by Barbara Brown, authorizing you to make a loan of four hundred dollars, you say you found among the papers in your safe?

A. Yes, sir.

Q. Have you been making a search for papers in this case?

A. Yes, sir; and in all the cases.

Q. You have made a pretty diligent search have you not?

A. No, sir; I have made a tolerably diligent search.

Q. In all these searches you have made for papers in all these cases you have never come across anything signed or written by Emma Taylor?

A. No, sir; and I stated several times that I would not
646 expect to find anything there, because nothing would naturally be in my safe that she had signed.

Q. Well, Barbara Brown authorized you to make this trust of June 8th, 1880. Did you let her have the money?

A. Yes, sir.

Q. How long after she made application for the money was it before she got it?

A. Not very long.

Q. What do you mean by "not very long"?

A. Within a few days; long enough to bring down the title and see as to the taxes.

Q. Do you remember when she made the trust?

A. Very likely it was dated the same day as the agreement. That is my custom.

Q. Then she made and executed the trust to you before she got the money?

A. I never made a loan until after the trust is made, and I do not think any man would.

Q. She left it with you?

A. To put it on record before I gave her the money.

Q. You put it on record before she got the money?

A. I always put a deed of trust on record before I give out the money.

Q. You put the deed of trust upon record before you gave her the money?

A. Yes, sir.

Q. How much interest was due on this trust when you foreclosed?

A. I could not tell without looking at the papers.

Q. Did you regard it as a close loan when you made it? I mean did you loan close up to the value of the property, $400?

A. Yes, sir.

Q. The property was not worth much more than four hundred dollars?

A. There was not much margin.

Q. Did it bring the full price of four hundred dollars at the sale?

A. I think so.

Q. You say in your testimony that if Emma Taylor had not conveyed that property, or, rather, as you say, assigned her bid to your sister Martha, your sister Martha would have lost one thousand dollars. How was that?

A. My sister Martha had a second trust on this property and another property, and as to the other property she had been cut out entirely by a sale which I did not know about until the date of the sale of this property, and on that she had a loan of six hundred dollars.

Q. She would have lost that anyhow whether Emma Taylor had assigned, as you say, her bid to your sister Martha or not?

A. No, sir.

Q. How was she able to recoup her loss by the fact that Emma Taylor assigned her bid to her?

647 A. She was better off with one house that would probably increase in value than none at all.

Q. In other words, by Emma Taylor assigning her this piece of property, not worth more than four hundred dollars, your sister would have saved one thousand dollars?

A. No, sir; I did not mean to say that. If she had not gotten anything at all her loss would have been six hundred dollars and the interest on the other, and she could fix up the property so that she could receive some portion of it back, which she did. She spent money on it and made it worth considerably more.

Q. You say that the property did not bring as much as the indebtedness on it—that is to say, as much as the charges upon it?

A. Yes, sir.

Q. How did you come to surrender the note to Barbara Brown if the note was not fully paid by the sale?

A. That was an agreement made by Barbara Brown. She signed the deed to my sister Martha. Mr. Kendall had pursued her, or threatened to pursue her, for a deficit, and she did not want to have any trouble about it, and, to show that she was perfectly fair about it, my sister authorized me to surrender it to her upon Barbara Brown's signing a deed.

Q. You say in your testimony that your sister Martha paid Barbara Brown one hundred dollars for signing that deed?

A. Yes; I said about that. I am not certain—yes; it was $100.

Q. How do you know she paid that?

A. Because she paid it through me.

Q. Did your sister give you one hundred dollars to pay her?

A. Yes, sir.

Q. Did you take any receipt from Barbara Brown for it?

A. Nothing but the deed. That is all the receipt I ever take, and I never have anything else.

Q. Does that deed show that you paid her one hundred dollars?

A. I do not know whether it does or not.

Q. If it does not show it, how would you have any memorandum or receipt that you had paid her the money?

A. I did not care about having any receipt for that particular one hundred dollars. I wanted the property to get to my sister. That is all I cared about, and the understanding was between them as to what should be done.

Q. Did you pay it in cash or by check, if you paid it?

A. I cannot remember at this length of time.

Q. You say that Mr. Coldwell advertised this property for sale?

A. Yes, sir.

Q. How do you know he advertised it for sale?

A. Because I saw the advertisement; because I trusted him always with such things. It was read at the time of the sale.

Q. Did you see it in the papers before the sale?

A. I must have done so.

Q. You must have done so, but you have no recollection that you did see it?

648 A. No, sir. I do not usually look at those things at the time.

Q. You did not consider in your duty as trustee to look and see if the property you advertised for sale was put in properly?

A. Yes, sir; I knew Mr. Coldwell so intimately—he was at my office and I was in his office—that I acted a little more loosely than I would with a stranger.

Q. Who paid the bill?

WITNESS: Which bill?

Mr. MACKEY: The bill of the advertising.

A. I assume that I must have.

Q. Was any bill presented to you for that?

A. I have no distinct recollection. I think it must have been, because the account was settled. I had not found it.

Q. You have found almost every paper of any interest in this case. Can you not find that bill of advertisement?

A. I may be able to find it; if I do I will be glad to furnish it. I do not think I have furnished every paper which ought to be furnished. There are a number of others which I would like to produce if I could find them.

Q. How often did you settle with Mr. Coldwell for his auctioneer's fees for the sales of real estate.

A. Sometimes there would be several sales run together, and he would make out a bill for all of them. There was no particular time for settlement.

Q. Did you settle with him monthly?

A. No, sir; no particular time.

Q. Well, he would present his bill within a reasonable time, would he not?

A. Sometimes he would and sometimes I have to run after him; sometimes I had quite a good deal of trouble to get bills from him—that is, he was dilatory about such matters with me—and sometimes I paid him as soon as the sales were completed.

Q. Well, he would come within three or four or five months, would he not, for his money and you would pay him?

A. He got his pay whenever he came after it. I could not tell when I paid him without referring to memoranda.

Q. Would he wait as long as a year and a half for his money?

A. I guess he would wait on me for five yaers.

Q. Look at that bill (Exhibit A. H. No. 22 in the Hayne case) and see if it is not dated by Mr. Coldwell as follows: "Feb'y 19, 1881, to auctioneer's services sale of W. ½ lot 10, sqr. 388, $16.50," and the last item is dated Nov. 29, 1882 (a year and a half afterwards), for the sale of part of lot 13, in square 296, for $22. Do you mean to say that Mr. Coldwell stood out of his money for a year and a half on some of those items before you settled with him, although he was in your office?

A. Mr. Coldwell was not in my office at the time this bill was made out. Mr. Coldwell at this time was on F street be-
649 tween 12th and 13th streets northwest. I said that he was at one time in my office. We were always very intimate. When he wanted money to use for anything he would come to me for it, and I would overpay him twenty or thirty dollars; he was a good, honest man, and if I had twenty dollars I would hand it to him, as my sister here (referring to Emma T. McIntire) knows, and he always paid it back to me, and this account possibly was held over for matters of that kind.

Q. This bill showed that it was running for a year and a half?

A. I am not positive about that; it does not show that it was not settled for a year and a half, because, as I said just now, I may have overpaid him for all of this in the way I have just indicated.

Q. Are those all the sales he had for you in that year and a half?

A. That I am not able to say. I think not.

Q. How many sales are on that bill?

A. Five (5).

Q. You cannot tell whether he had more than five sales for you from February, 1881, up to September, 1882?

A. No, sir; I could only tell from my memoranda. I rather think there was more than that, though, because at that time I was making quite a number of them.

Q. Mr. Coldwell charged you $16.50 for a sale of a piece of property which brought $525.00 according to this bill. Do you know what commission he charged you for selling that property?

A. I would have to calculate.

Q. Do you know without calculating what commission he charged you?

A. I say that I cannot tell until I calculate it.

Q. You do not know what commission Mr. Coldwell charged you for the sales of real estate made by him?

A. No, sir.

Q. Has he not made a great many sales for you?

A. Yes, sir.

Q. You never knew what his charge was in the way of commission?

A. Not to be able to state under oath.

Q. Whether three or five or ten per cent.?

A. I think—I am guessing now—I think it was thirteen dollars on the first one thousand dollars and one per cent. on all after that.

Q. Now, you can make your calculation if you like; here was a sale for five hundred and twenty-five dollars for which he charged you sixteen dollars and fifty cents and one dollar for the bellman, making seventeen dollars and fifty cents. Now, what percentage was that?

A. I said thirteen dollars awhile ago; I think I am wrong; I think it was thirty on the first thousand dollars[$1,200*]. I really could not tell without looking at my memorandum. It was rated so much on the first thousand[$1,200*], in round numbers, and one per cent. afterwards; but those things are out of my mind now.

650 Q. How would he get it up to sixteen dollars and fifty cents in the same rule of proportion on the sale of four hundred dollars' worth of property when he only charged sixteen dollar- and fifty cents for five hundred and twenty-five dollars' worth of property?

A. There may have been something else in regard to that.

Q. This sale was made on the 1st of April, 1881?

A. That is my recollection.

Q. He has in here a charge on April 15, 1881, for sale of sublot thirty-six (36), in square 10 something—there is something here erased and something written over it. How is that?

A. That is a clerical error. I do not know; I do not understand it; it has been so long ago.

Q. This bill includes his services as auctioneer from Feb. 19, 1881, to September 29, 1882; something over a year and a half. That is not a clerical error, is it?

A. I do not know whether it is or not. I would not know without going over each one of those items to see.

Q. Do you remember who were present at that sale and bid upon the property besides Emma Taylor?

A. Yes, sir. I remember that Mr. Kendall was there and bid on it.

Q. He is dead. Please give us the name of some living person.

A. There are so many dead who were living at that time that I could not tell. The auctioneer is dead.

Q. You cannot remember anybody living now who was present at that sale and bid upon the property?

A. I cannot just now.

Q. Can you remember anybody who was present at that sale and did not bid upon the property save your sister and Emma Taylor and Mr. Kendall, who is dead, and Mr. Coldwell, who is dead?

A. Yes, sir. There was Mrs. Brown, but she is dead.

Q. Give us the name of some person besides your sister and

[* In pencil in copy.]

Emma Taylor who was present at that sale—whether they bid upon the property or not—who is now living.

A. There was a man who keeps cows. He had a pasture immediately opposite there. He was present at the sale.

Q. You do not know his name?

A. No, sir.

Q. I ask for the name of some person.

A. I think I stated his name the other day when on the stand.

Q. That is the only person you can remember, or the only name?

A. I can remember that quite a number of persons were there; but I have been to so many sales since that I cannot state positively who were present.

Q. What was that house rented for at the time you sold it?

A. Six or eight dollars a month; something like that.

Q. That would be ninety-six dollars a year?

A. I do not think it rented for eight dollars, but six dollars a month.

651 Q. That would be seventy-two dollars a year. You were collecting the rent, were you not, for Mrs. Brown?

A. I was for part of the time; I do not think all the time.

Q. Were you not collecting the rent for this property at the time you had the mortgage upon it?

A. I was not collecting the rents all the time I had the mortgage upon it.

Q. You did not have a mortgage upon it but for a few months?

A. I am not positive.

Q. After she came to you and asked you to loan her four hundred dollars upon that property did you not collect the rents for her?

A. Well, that is the same question in another form. I am not certain whether I did or not. I have no recollection of it.

Q. How did she come to you—was it not because you were renting the property for her?

A. No, sir; she came to me through Mr. Peugh.

Q. That property brought, at all events, seventy-two dollars a year. The interest on the note was forty dollars a year?

A. Yes, sir.

Q. Ten dollars a quarter?

A. Yes, sir.

Q. You have stated that you were a friend of Mrs. Brown?

A. Yes, sir.

Q. And sought to befriend her whenever she came to you?

A. Yes, sir, and I did so.

Q. Do you think it was befriending her by taking her property, which was bringing twice as much money a year in the way of rents as the interest amounted to in a year; to sell her out because the interest was due?

A. It was not bringing that much.

Q. Was it not bringing seventy-two dollars a year?

A. No, sir; the rent was not collected every month.

Q. You could not collect the quarter's interest due out of that property, amounting to ten dollars, or that was due on that prop-

erty at the time you sold her out for the non-payment of ten dollars' interest?

A. No, sir; I do not know that I could.

Q. You made the loan to her on June 8, 1880, for two years, at ten per cent. Now, you sold the property on April 1st, 1881. She had paid some interest, had she not?

A. No, sir.

Q. She never paid a dollar to you?

A. No, sir; I do not remember that she ever did.

Q. There was interest due for nine months, amounting to thirty dollars?

A. That is according to the calculation. I do not swear that that is the actual fact, because I have nothing to base my recollection upon just now. She was in arrears; how much I am not able to swear to, but the calculation will show.

Q. Do not your books show that you were collecting the
652 rents for this lady during all that period from June 8, 1880, down to the date of the sale of that property?

A. No, sir.

Q. Do not your books show that you had the collection of the rents from Mr. Brown?

A. The book containing the rents during that period I told you was destroyed.

Q. Do you mean to say that the rents collected from this property were paid to Mrs. Brown notwithstanding she owed you thirty dollars' interest?

A. Yes, sir; I know that something was paid to her. I know that this sale was made by her willingness. She agreed that the sale be made, and she was at the sale and signed the deed afterwards, to show her willingness.

Q. You say in your examination-in chief that when you were on the witness stand at the police court you were forced to divulge the name of the owner of the property?

A. Yes, sir.

Q. And you stated then and there that the owner was Martha McIntire?

A. Yes, sir.

Q. Why did you try to keep from divulging the name of the owner?

A. Because that man Frizzell who has testified in this case threatened to bring suit for damages done to his property, and I did not want my sister sued.

Q. You did not want the public to know that your sister, Martha McIntire, owned that property?

A. I did not say that. I did not care whether the public knew it or not; there was no reason why I should keep it hid.

Q. Then why do you say that you were forced to divulge the name of the owner?

A. I stated to the court my position in the matter, and that the damages which occurred in these premises would be fixed. I did not want Mr. Frizzell to pursue her.

Q. You say in your examination-in-chief that Mr. Frizzell told you that he had examined the records and found that the property stood in the name of Emma Taylor. Q. Did you know at that time or think at that time that he was mistaken about it?

A. Yes, sir; I did not think he knew much about examining titles?

Q. Even when he told you that he had examined the records and found that the title to the property stood in the name of Emma Taylor?

A. I thought he had got his information from the tax office instead of from the record office.

Q. He told you that he had examined the records and found that the property was in the name of Emma Taylor. That is what you state in your examination-in-chief. Now, when he told you that, did it not occur to you to ask your sister Martha how the
653 property was standing in the name of Emma Taylor when Emma Taylor had conveyed the property to her?

A. No, sir; not when such a man as Frizzell made the remark, because he was not an attorney and did not know anything about the record; at least, I did not think he did; but if an attorney had told me that I would have done so.

Q. It never occurred to you or to your sister to record that deed or to look and see whether it was recorded until after this suit was brought?

A. It did not occur to me. I do not know what occurred to her. She has testified, though, that it was due to carelessness and ignorance on her part.

Q. You collected the rents of this property after it was purchased at that sale, did you not?

A. Yes, sir; I collect them at the present time, too.

Q. And you have, ever since the sale, been collecting the rents?

A. I think so.

Q. For whom did you collect them?

A. For my sister Martha. I paid the rents to her.

Q. How do you pay your sister Martha those rents—by check?

A. I usually draw a check and then cash the check.

Q. Have you any account or anything to show that you have been paying her the rents for this property?

A. Yes, sir.

Q. Before this suit was brought?

A. Yes, sir.

Q. Where are those accounts?

A. In my office.

Q. Will you produce them?

A. I could not leave my book here. I am willing to produce them.

Q. I do not want you to leave them here. I want to cross-examine you about it. Will you produce the book at the next session?

A. I am willing to do so

Q. How far back does that book go?

A. Back to 1885—I think it does; I am not certain.

Q. You do not object to bringing that book here and be cross-examined about it?

A. I will bring it with the understanding that I take the book back. I do not want to leave it.

Q. I want the court to see the book.

A. I will not surrender the book.

Q. Very well. You bring the book here, at all events.

A. I will bring it. If you try any shut-up game I will not bring it.

(Adjourned.)

654 JUNE 2ND, 1893.

* * * * * * *

Martha McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. And you are a sister of the defendant Edwin A. McIntire?

A. Yes, sir.

Q. Did you have any business connection with Barbara Brown?

A. I had two notes on her houses.

Q. When did your business connection with her begin?

A. I think it was some time in 1880.

Q. What was your first business with her?

A. I loaned her some money on her property.

Q. What loan did you make to her?

A. I made her a four-hundred-dollar loan and a six-hundred-dollar loan.

Q. Which was the first?

A. The four hundred, I think, was the first.

Q. Was that secured?

A. That was secured on house No. 1216 I street northeast, in this city.

Q. By deed of trust?

A. Yes, sir; by deed of trust.

Q. Did you have the deed of trust in your possession?

A. No, sir; I think my brother had it for a good while, for he kept my papers.

Q. Will you look at that paper (Exhibit A. H. No. —) and say whether that is the deed of trust or not?

A. Yes, sir.

Q. Did you come in personal contact with Mrs. Brown when you made this loan?

A. No, sir; I never saw her at all.

Q. How did you make it?

A. Through my brother.

Q. Did you authorize him to make the loan?

A. Yes, sir; he acted as my agent.
Q. Well, you took a note for four hundred dollars, did you?
A. Yes, sir.
Q. What became of the note?
A. I gave that note up when the house was sold at auction.
Q. Well, this four hundred dollars which you invested in that loan, whose money was it?
A. My own money.
Q. Had your brother any interest in it?
A. No, sir; not at all.
655 Q. Well, now, did you say the property was subsequently sold under the deed of trust?
A. Yes, sir; it was sold under the trust at public sale.
Q. Will you look at that indorsement on the back of that trust (Exhibit A. H. No. —) and say whether that is in your handwriting?
A. No, sir; it is not in my handwriting, but my signature is there.
Q. Who wrote the body of the indorsement?
A. It looks like my brother's handwriting.
Q. Why did you order the property sold, because the interest was in default?
A. Well, that was one thing; and then there was a severe storm which took the roof off, and I was afraid that the house would not be worth anything.
Q. What kind of a house was it?
A. It was a two-story brick house, with five rooms, up little steps, twelve or fifteen feet up.
Q. The street had been cut down?
A. Yes, sir; the house had been damaged.
Q. By cutting the street down?
A. No, sir; by the storm. The house was damaged by the storm—a severe rain and thunder storm, I suppose it was—and they wrote on and told me about it, and I thought it had better be sold. My brother advised me to, you know he was my adviser, as I was not here.
Q. Did you know at the time the sale took place?
A. Yes, sir; I knew when it took place. I have a kind of recollection of it.
Q. How do you know about it?
A. Through the advertisement sent on to me.
Q. What was the advertisement?
A. Kind of auctioneer's advertisement. I think Mr. Coldwell was the auctioneer.
Q. The trustees' advertisement?
A. Of the trustees' sale.
Q. You received a copy of the advertisement?
A. Yes, sir.
Q. What became of that advertisement?
A. Well, I do not know whether it is among my papers or not,

as so many papers were destroyed when we moved, and more than likely it went with the other papers.

Q. Have you searched for it?

A. I have searched for it, but I have not made a very diligent search, as I have not been very well; but I have not come across it in what search I have made.

Q. You spoke of another loan which you made to Mrs. Brown?

A. Yes, sir; that is the six-hundred-dollar note of hers.

Q. That was a subsequent loan?

A. Yes, sir; that was secured partly on one of her houses and partly on another house of hers.

656 Q. It was a second trust?

A. It was a second trust.

Q. And it was a second trust upon the other house, too?

A. Yes, sir.

Q. What became of the other trust?

A. It was sold. I got nothing from that sale.

Q. Upon the second sale, the sale you ordered of this property, did you get anything to apply upon your second trust from the sale?

A. No, sir; when the property was sold I gave her the four-hundred-dollar note and a little money besides for the place to make things square, I suppose it was.

Q. But you got nothing to apply on your other trust?

A. No, sir; nothing at all.

Q. Have you ever collected that six-hundred-dollar note?

A. No, sir.

Q. No part of it has ever been paid?

A. No, sir; I have it yet.

Q. The property, then, stands you about eleven hundred dollars?

A. Yes, sir; with a little more than that when everything is counted up.

Q. Do you know who bought that property at that sale?

A. Emma Taylor.

Q. How do you know that?

A. My brother told me, and then she transferred it to me afterwards.

Q. How did she make the transfer to you?

A. Through my brother.

Q. By deed?

A. Yes, sir; by deed from her and Barbara Brown.

Mr. MACKEY: I object to the witness stating what her brother told her.

Mr. HENKLE: I do not care about that.

Q. She made you a deed in connection with whom?

A. Mrs. Barbara Brown.

Q. Will you please look at the paper that I now hand you, being Exhibit A. H. No. 1, and say whether that is the deed you refer to?

A. Yes, sir; this is the one.

Q. Was that deed delivered to you?
A. Yes, sir; I had it at one time.
Q. You had it in your possession?
A. Yes, sir.
Q. It bears date the 25th of April, 1881, and it is indorsed as being recorded in April, 1891. How did it happen that this deed remained so long a time off of the records?
A. It was either sent to me or given to me in Philadelphia, and then it was kept off the record through carelessness on my part, or ignorance. I cannot attribute it to anything else. I cannot
657 say whether my brother brought it on or sent it on to me through my sister when she came to Washington.
Q. Did you have it in your possession all that time?
A. No, sir; not all the time. When we came to Washington I had my things in my brother's safe.
Q. You mean that you had a place in your brother's safe where you kept your deeds?
A. Yes, sir; a large envelope in his safe, with my papers in.
Q. Then you mean that you had put the deed in your brother's safe?
A. Yes, sir.
Q. You do not mean that you had turned the deed over to him?
A. No, sir; it was really in my possession.
Q. Miss McIntire, I find another deed bearing date the 6th of September, 1884, conveying three several pieces of ground, and this property seems to be one of them. Will you look at the paper now handed you, being Exhibit A. H. No. 2, and explain that deed, if you please?
A. This deed involves the three properties.
Q. How did this deed come to be made?
A. I bought two other houses from Emma Taylor with the one she conveyed to me on I street.
Q. Well, do you remember why you put that property into this deed?
A. So as to put together all the properties I bought from the same person.
Q. Miss McIntire, was there any other reason than that—had you mislaid the deed to that property? Was there any other reason why you put that property into this deed?

Mr. MACKEY: I object to the question because it is leading and suggestive to the witness.

A. I think the other deed was not right at hand at the time. That is all the recollection I have of it now.
Q. Were you in the habit of taking care of your deeds yourself?

Mr. MACKEY: Objected to as leading.
(NOTE.—Last question withdrawn.)

Q. Well, who took care of your deeds?
A. I took care of my deeds, but the other papers my brothers took charge of.

Q. I am speaking of the deeds.
A. I took charge of the deeds and deeds of trust.
Q. When a deed was made to you your brother turned it over to you?
A. Yes, sir.
Q. And you took charge of them?
A. Yes, sir.
Q. After you came to Washington and, as you say, used your brother's safe, how did you deposit or keep your deeds there?
658 A. In a large envelope there.
Q. Who had charge of that envelope?
A. I had charge of the envelope. I simply put it in his safe.
Q. For what purpose?
A. For safe keeping until I got the box in the safe deposit company.
Q. When did you get your box in the safe deposit company?
A. About the time of Cleveland's first inauguration. I forget the date.
Q. After that then what?
A. Then I kept them in the box in the safe deposit company with my valuables.
Q. How was it about your understanding of the necessity for putting your deeds on record?
A. Well, I knew it was the right thing to put a deed on record, but at the same time I thought that if I had the deed made out all right I was safe enough.
Q. If you had the deed itself?
A. Yes, sir.
Q. And for that reason you were——
A. (Interposing.) I was careless about it.
Q. About recording the deed?
A. Yes, sir.

Mr. MACKEY: I object to this method of leading the witness.

Q. Miss McIntire, who has controlled this property since you purchased it?
A. My brother has been collecting the rents and attending to it.
Q. As your agent?
A. As my agent.
Q. What has been done with the rents?
A. Handed them over to me. I receive the rents.
Q. He pays the rents regularly to you?
A. Yes, sir; he pays me the rents and pays the taxes and repairs.
Q. What interest has your brother in that property?
A. No interest at all, except as a favor to favor me.
Q. Did he ever have any interest in it?
A. No, sir.
Q. When did you first learn that there was any question about your title?
A. Not until the Pryor case was commenced. I thought everything was secured until then.

Q. When you were on the stand before you stated that you were never a depositor in any bank in Washington. Was that correct or not?

A. No, sir; I had forgotten that I was a depositor in the German-American bank, the one at 7th and F streets. I was a depositor there in 1876. I do not know exactly how long I was a depositor there, but I know it was in 1876, when I kept house for my brother, who has died since—the father of Laura Galligher.

659 Mr. HENKLE: That is all.

Mr. MACKEY: I will have to postpone the cross-examination of Miss Martha McIntire until I can see written out her examination-in-chief.

Whereupon EDWIN A. MCINTIRE deposes and says, being recalled for further cross-examination:

By Mr. MACKEY:

Q. I understand you to say that on the sale of this property to Emma Taylor you made a deed to her of it?

A. Yes, sir.

Q. The deed being dated April 1, 1881, and filed as Exhibit —?

A. Yes, sir.

Q. Well, then, afterwards you say that you found out that your sister Martha would lose considerable money unless she got that property, and so you induced Emma Taylor to assign her purchase to your sister?

A. Yes, sir.

WITNESS: Have you that deed here? I do not know the date of it.

Mr. MACKEY: That is the date of it—April 1st.

Q. This deed of Edwin A. McIntire to Emma Taylor (Exhibit A. H. No. —) was made by you in pursuance of that sale?

A. Yes, sir.

Q. Why did you have Barbara Brown make a deed to your sister Martha of that property instead of having Emma Taylor make her deed directly to your sister Martha?

A. It was suggested by somebody at the time, I forget now whom; I think by Mr. Peugh. One of the reasons was so as to convey the right to claim any drawbacks or damages against that property by the city for reason of cutting down the street.

Q. If Barbara Brown should make a deed to your sister?

A. Yes, sir.

Q. But how could Barbara Brown make a deed to your sister conveying her any title when you had already conveyed to Emma Taylor the title which you held as trustee under that sale?

A. By Barbara Brown and Emma Taylor joining together, intending the deed to convey the right of both.

Q. I understand you to say that you drew up the deed first to your sister Martha?

A. Yes, sir.

Q. And then, Emma Taylor happening to be — Mr. Helmick's office, you had her join in that deed?

A. Yes, sir. My purpose was to make another deed—make two deeds.

Q. Your purpose was to have another deed from Emma Taylor to your sister?

A. Yes, sir.

660 Q. Why did you not get a deed from Emma Taylor to your sister first before you got a deed from Barbara Brown to your sister?

A. Well, that was agreed upon between them. It did not make any difference who would be first. The intention was to get both of them.

Q. The deed was drawn up by you first to your sister Martha, and then afterwards you inserted the name of Emma Taylor, she being in Mr. Helmick's office, as I understand you?

A. In place of two separate deeds. When I found her in Mr. Helmick's office I was about to make another deed, but Mr. Helmick and Mr. Peugh were about going out; they were in a hurry, and Mr. Helmick suggested that I incorporate it in one deed.

Q. I show you this deed (Exhibit A. H. No. 1), purporting to be the deed from Barbara Brown and Emma Taylor to Martha McIntire, dated the 25th day of April, and ask you whose name was inserted in that deed first as grantee before the name of your sister, Martha McIntire, was put there?

A. I think that was David McIntire's name there first.

Q. Why was David McIntire's name put there?

A. Well, he was buying property at that time, and I thought he might purchase it. He knew about the property. He owned property there, and he was residing in this city, while Martha was not, and if the property was conveyed to him it was so much better for her to get the money from him.

Q. Let us understand that. This was a deed drawn up by Barbara Brown to David McIntire at first?

A. I am not certain about that. That is my impression.

Q. It was drawn up for somebody else other than your sister Martha?

A. It seems to be. That was before it was executed by Barbara Brown.

Q. There was some name put in there other than your sister Martha's name?

A. Yes, sir; I think it was the name of David McIntire.

Q. Well, now, you drew up a deed from Barbara Brown to David McIntire; was that it?

A. Yes, sir.

Q. How could Barbara Brown convey to David McIntire a piece of property when it had already been conveyed by you to Emma Taylor?

A. In the same way that she could have conveyed to Martha McIntire. The purpose was to have the two convey to whomever

conveyed to him, whether Barbara Brown conveyed to Martha McIntire or whether Martha McIntire assigned to David McIntire.

Q. Then the purpose was to have Barbara Brown convey to David McIntire, and afterwards have Emma Taylor convey to David McIntire?

A. Yes, sir; if Martha McIntire was willing.

Q. How would that have saved your sister—a conveyance on the part of Barbara Brown and Emma Taylor to David McIntire?

661 A. Very well, if he paid off her notes.

Q. What notes?

A. The $400 note and the $600 note.

Q. The $400 note was paid off by the sale to Emma Taylor?

A. Yes, sir.

Q. Paid off to Martha McIntire?

A. No, sir; at the time that deed was made she had gotten no money out of it.

Q. Who held the note?

A. Martha McIntire.

Q. The property sold for four hundred dollars?

A. Yes, sir.

Q. Was not that four hundred dollars which Emma Taylor paid to be applied to the liquidation of that note?

A. Emma Taylor did not pay the four hundred dollars. Before she made the payment this transaction took place that I told you about.

Q. Well, then, David McIntire was to pay the four hundred dollars?

A. He was to get Martha McIntire out of the difficulty she was in. She held the four-hundred-dollar note and the six-hundred-dollar note also.

Q. He was to pay the four hundred dollars to Martha McIntire and the six hundred dollars besides?

A. Yes, sir.

Q. To get this piece of property?

A. Yes, sir.

Q. Which you suppose was worth one thousand dollars?

A. Yes, sir.

Q. Did you suppose that your uncle, David McIntire, would give one thousand dollars for that property?

A. It was in such condition that quite a number of improvements had to be made on it, and I thought he could make the improvements on it. I consulted him before that, but he would not listen to it.

Q. You thought he would give one thousand dollars for the property?

A. Yes, sir; I thought so, but he would not do it, and it was put in her name.

Q. Although you say the property was worth no more than four hundred dollars, the price it sold for?

A. Yes, sir. It was my doings entirely, not his doings. He would not listen to it at all.

Q. Was this deed (Exhibit A. H. No. 2) filled up and ready for Barbara Brown to sign, conveying the property to David McIntire?

A. I am not certain as to whether all the little blanks in the deed were filled up or not.

Q. You are not certain whether all the blanks were filled up or not?

A. No, sir; I am not certain whether all the smaller blanks were filled up, but the larger ones were, I believe.

662 Q. Well, it was indorsed on the back, was it not?

A. That I am not positive about. No, sir; it is not likely to have been.

Q. It was not indorsed on the back?

A. I could not say positively; but not likely.

Q. Look and see if there was not a name erased in the indorsement on the back and that of Martha McIntire put there.

A. If there is I am mistaken.

Q. Is there not a name erased above that of Martha McIntire there?

A. No, sir; I see no name erased; there is some mark or erasure there, but I cannot see any name erased there; it does not look as if it was; it look- as if a blot was erased there.

Q. Do you say there was no other name written on the back there at the time?

A. I do not say that at all; I do not recollect it.

Q. Will you hold it up to the light and see?

A. I see an erasure above the name there; I admit that, but I have no recollection of any other name being written on the back of it.

Q. Over here, on the second page of this deed (Exhibit A. H. No. 2), are these words: "Unto the said party of the second part, her heirs and assigns." Do you see those words?

A. Yes, sir.

Q. If that had been David McIntire's name there would you not have said "his heirs and assigns"?

A. If that was filled out, possibly I did not fill it out, but I am not positive about that.

Q. Was not that filled out?

A. I should say it was not as it looks there.

Q. You just had the front part of it filled out with David McIntire's name?

A. No, sir; I said that I had the larger blanks filled out; I said that I was not certain about the smaller blanks, but I see now that the smaller blanks were not filled out at that time.

Q. Why would you take a deed of that sort and erase it as neatly as that is erased and insert the name of Martha McIntire over that erasure when you could have written a new deed and saved the trouble of all those corrections?

A. Because I could correct it in one-tenth of the time that I could write a new deed.

Q. But this deed was not filled out—only the name of David McIntire was there?

A. I do not say that. I said that the larger blanks were filled out.

Q. That is, the name of David McIntire and the description of the property?

A. Yes, sir.

Q. On the second page, as I understand you, nothing was filled out there?

A. I did not say that.

663 Q. What do you say about that?

A. I say that all the larger blanks were filled out and that I have no recollection of the smaller blanks, I have said three or four times; but I state now positively, upon looking at the deed, that the smaller blanks were not filled out at that time.

Q. Well, I call your attention to this deed made on the 18th day of June, 1880, being the deed of trust executed by Barbara Brown to you, as trustee, to secure this four-hundred-dollar loan (Exhibit A. H. No. 3), and ask you to look on the outside of that deed and state if you do not see some pencil-marks headed "Sold Emma Taylor."

A. Yes, sir.

Q. The next item is "Advert-ing, $8.03."

A. Yes, sir; it does look like that.

Q. Is it not so?

A. It looks like it.

Q. Is it not so?

A. I do not know.

Q. Is not that in your handwriting?

A. It looks like it. I cannot see distinctly. I cannot tell.

Q. Where did you get that item of $8.03 for advertising?

A. I have not the slightest recollection. I do not know what it refers to.

Q. Does it not refer to the advertising of this property?

A. I do not know; it is so indistinct that I cannot tell, and I have no recollection of it.

Q. I believe that you have stated that you have a bill of this advertising?

A. Yes, sir; I had a bill of the advertising.

Q. Where is it?

A. I have not it with me. I had the bill at one time.

Q. What is the amount of the bill?

A. I cannot recollect.

Q. Do you remember by whom the bill was presented?

A. By Mr. Coldwell.

Q. I mean who was the payee in the bill?

A. I do not know.

Q. You do not remember whether it was presented by the National Republican, the Post, the Star, or the Critic?

A. No, sir; I do not remember where it was advertised. Mr. Coldwell managed those things entirely. I paid no attention to them except to see that they were paid. At that time I was con-

cerned in a number of sales with Mr. Warner and others and I cannot keep them in my memory.

Q. Did you not say that you did not charge Barbara Brown any commissions for selling this property?

A. Yes, sir.

Q. Look there (Exhibit A. H. No. 3) and see if that is not a charge of $20 for commissions.

A. It is not a charge at all; it is a pencil memorandum;
664 but what it refers to I cannot tell and have no idea at all. It may have been an estimate shown to somebody. It seems very likely that it was, from the fact that it was erased; something shown to her or something shown to Mr. Peugh or something shown to Mr. Helmick or something shown to Emma Taylor; I do not know.

Q. Right below that you will see "Auctioneer's fees, $10." Was that the fee you were to pay to Mr. Coldwell?

A. No, sir; his fee is incorporated in his bill, whatever that was.

Q. I want you to explain why you put down there $10 when you have in the bill here a charge of $16.60 for the selling of this property.

A. I said awhile ago that I do not know when that estimate was put on there. I cannot see it distinctly now. I cannot read it and I do not know to what it refers.

(Adjourned.)

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JUNE 27, 1893.

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EDWIN A. MCINTIRE, who further deposes and says, being recalled for redirect examination.

By Mr. HENKLE:

Q. Mr. McIntire, in your testimony at page 147 of the record in this Brown case you are reported as saying that you supposed the Barbara Brown property was worth one thousand dollars. Do you wish to make any explanation in regard to that?

A. Yes, sir; I think that is a mistake; I think that is a clerical error. I think the question was, "Did you consider the property worth four hundred dollars?" and I answered, "Yes; I did." I did not understand that the question stated one thousand dollars instead of four hundred dollars, because I never considered the property worth one thousand dollars.

Q. You are represented as saying that you offered the property to your uncle, David McIntire, for one thousand dollars. What is your explanation of that?

A. I thought he might take it for one thousand dollars. David McIntire was engaged in my office for many years. He was a real-estate broker, and he attended to matters for me. In this Barbara Brown transaction he examined the securities and reported favor-

ably upon it. He reported that the property was security for the loan of four hundred dollars, and he also reported on the property on E street, I think it is—the property covered by this deed of trust in evidence here—as being sufficient security for the second trust of six hundred dollars; and when the property was sold it seemed to be in such condition as to be a loss to my sister that I thought he was morally bound to take it, and I so suggested to him; that was one of the reasons why I made the deed to him.

665 Q. Do you mean to be understood as saying that your sister made those two loans upon those properties upon the estimate and recommendation of your uncle, David McIntire?

A. Yes, sir; he made the recommendation to me first, and then upon his representations I recommended to her.

Q. And it was for that reason you thought he might be willing to take the property at one thousand dollars?

A. Yes, sir; he was a man of means; could well afford to do it, and I thought he should make good his recommendations, but he refused to do it.

Recross-examination.

By Mr. MACKEY:

Q. So, then, your explanation of putting the name of David McIntire in the deed is that you thought he was under obligations to take the property?

A. Yes, sir; that was one of the reasons.

Q. Did you ever speak to him about it and tell him that he was under obligations to do it?

A. Yes, sir.

Q. What did he say about it?

A. He did not consider himself bound at all, and he asked me in reply whether I always did that.

Q. That was, of course, before you had put his name in the deed that you spoke to him about his moral obligation to take the property?

A. I do not know when it was I spoke to him, whether before or after.

Q. Was it before or after?

A. I just answered that I do not know whether it was before or after.

Q. You would not have drawn up the deed, put his name in the deed, and everything for him to sign for him to take the property unless you had some conversation with him about it?

A. Yes, sir; he was my uncle, and I thought he could be governed by what I directed him in such matters.

Q. You thought he would give one thousand dollars, or what was equivalent to one thousand dollars, for a piece of property which you thought was not worth more than four hundred dollars?

A. I thought he was morally bound to take it.

Q. Assuming that he was morally bound, without saying a word

to him about it you made out that deed and put his name in as grantee?

A. Yes, sir.

Q. With the expectation that he would pay you one thousand dollars for the property?

A. Yes, sir; that was one of the reasons which prompted me to do it.

Q. Without saying one word to him about it?

A. I do not know whether I said anything to him about it or not at that time. I would have done so——

666 Q. (Interposing.) Was he not in your office all the time?

A. Nearly all the time.

Q. Did you not have opportunity to speak to him about it?

A. Yes, sir.

Q. Did you not avail yourself of that opportunity?

A. I told you that I do not know whether I did or not.

Q. Do you think it at all probable that with the man in your office every day, as you say, who had misled your sister to such an extent that she had lost $600, and you conceiving that he was under obligation to make good to her that loss, that, without saying a word to him about it, you sat down and wrote a deed and put his name in it as grantee, expecting him to pay one thousand dollars for the property?

A. In the first place, I did not say that he misled my sister, and then, answering your question further, I say that I consider him morally bound to make good, under the peculiar relations between him and myself, what my sister had lost by reason of his having recommended the property as security for the loan, and I thought that he would do it, because he was only governed in all matters by my directions.

Q. He was not governed in this matter by your directions?

A. He refused to do it.

Q. That is not an answer to my question. I want to know whether you think that was a probable thing for you to do—that is, having your uncle in your office every day, having said that it was through him this loss of your sister was incurred, and having conceived yourself that your uncle ought to make good that loan, you, without saying a word to him about it, wrote out this deed, making him grantee in it, and which, if he had accepted it, would have cost him one thousand dollars—do you think that you would have done that of your own motion without speaking to him personally about it?

A. That is the same question you asked me before, and I have to say that under the peculiar relationship existing between him and myself, as he was governed by my direction, I had no hesitation in drawing up the deed and passing it over to him and asking him to take the property.

Q. You drew up a deed of the same sort in which you put the name of David McIntire?

A. Yes, sir; not of the same sort.

Q. Well, you drew up another deed——

A. (Interposing.) I have drawn up a thousand deeds. I have put his name in a hundred deeds.

Q. Did you not as to another piece of property in controversy in these cases here, put the name of your uncle in the deed?

A. Yes, sir; he was continually buying property, and when property was offered to him he was always ready to pay for it at once. He most always had several thousand dollars lying idle.

Q. You sent on the deed of the Barbara Brown property to your sister in Philadelphia, did you not?

667 A. I either sent it to her or took it to her there; I do not know which; but I gave it to her.

Q. Why did you not record it before you sent it to her?

A. I have no recollection of the circumstanees at all after the deed was made.

Q. Is it likely that you, being a real-estate man, would have purchased a piece of property for your sister and then send the deed to her without having it first recorded?

A. I found a deed this morning which was in that condition. I do not know whether I gave it to her or mailed it to her or sent it to her by some one of the family. Some one of the family were back and forth between here and Philadelphia continually.

Q. Did you intend that she should send it back to you to have it put on record?

A. If I had a clear recollection how it was gotten to her I could answer that question; but I cannot, because I do not know.

Q. I believe before your family moved on here they sold out everything in Philadelphia, did they not?

A. No, sir.

Q. Did they not sell out their property and everything?

A. No, sir; they may have sold some things, but they did not sell everything, for they brought furniture on with them.

Q. Did they not sell out some furniture there?

A. I do not know.

Q. Well, did they not sell out some real estate they had?

A. Not that I know of. They sold some before they came here in 1882.

Q. Before they came here in 1882?

A. Something before.

Q. How long before they came here?

A. I could not say.

Q. Well, was it fifteen days, fifteen weeks, fifteen months, or fifteen years?

A. I cannot say.

Q. What was it they sold?

WITNESS: Do you mean what house they sold?

Mr. MACKEY: Yes.

A. They sold the house where I was born.

Q. Sell any other?

A. I do not remember whether they did or not. I did not do it.

Q. Well, your family did?

A. I had no connection with it.

Q. To whom did the house belong that was sold in which you say you were born?

A. To my father.

Q. Was that sold before or after your father's death?

A. Before. He sold it himself.

Q. Have you brought with you the books containing your rent accounts with your sister, Martha McIntire, which were called for at the last session?

668 A. I told you that I would bring my book, provided I was allowed to take it away again, and you said you would see about it, but I do not propose to bring my books here and have them kept here, and thus shut up my business. I will produce the books if I am allowed to take them away again; otherwise I will not.

Mr. MACKEY: There is no necessity to have the books impounded at all.

WITNESS: Well, if you had stated that before I would have brought them.

Mr. MACKEY: I ask the examiner to put upon the record, for the attention of the court, that I have repeatedly, during the course of these examinations in these cases, called upon this witness to produce his rent books and accounts with his sister, Martha McIntire, and with Emma Taylor; that he has repeatedly promised to produce such books, but has, up to this time, invariably failed to carry out that promise, and that we refuse to extend the time beyond the first of July, as heretofore stipulated, for the purpose of permitting the witness to bring those books. If he will bring them tomorrow I am ready to *to* cross-examine him in regard to them, and whatever there may be in the books to which we desire to call the attention of the court it may be copied by the examiner, and, if the books themselves are necessary for production before the court, they can be marked by the examiner so as to be hereafter identified and produced in court.

Mr. HENKLE: The witness, in response to the demand for the production of his rent books regarding the account of Emma Taylor, has repeatedly said that he had no account with Emma Taylor for rents, and that his books show no account with her for rent.

Mr. MACKEY: In regard to rents or anything else.

Mr. HENKLE: In regard to the rent account with his sister, Martha McIntire, he has said heretofore and says again today that he has not promised to produce any such books except upon the condition that his books should not be impounded so that he would — embarrassed in carrying on his business, and *he* accounts are presumed to be in the books of current business, which would seriously embarrass him if he were deprived of them.

Mr. MCINTIRE: That book has only been called for once by Mr. Mackey.

Mr. HENKLE: He is willing to produce his rent book and allow it to be inspected and extracts to be taken from it with the understanding that his book is not to be retained.

Mr. MACKEY: In order to have this upon the record clearly, I will state again that the book- which we call for are such books as contain any accounts of any transactions with Emma Taylor and Martha McIntire from about the year 1881 down to the institution of these suits. We desire to inspect no books containing accounts with Martha McIntire since the institution of these suits, and if the witness proposes to bring an account book here containing accounts with his sister, Martha McIntire, since the institution of these
669 suits he may as well save himself the trouble, for we will object to their introduction in evidence.

Mr. MCINTIRE: I have repeatedly said in these sittings that the accounts I had in the early '80's were destroyed by fire. I have never been asked to produce the account that I have of rents collected for my sister, Martha McIntire, until the last sitting, and I expressed willingness to do so. My account is not directly with my sister, Martha McIntire, but with the tenants. The book is such as are used by real-estate brokers, with ruled columns, showing the owner of the house, the name of the tenant, and when the rent was paid. I keep no ledger account, strictly speaking, with any owner, but the book I have, call it my rent book, I will produce for examination.

By Mr. MACKEY:

Q. That rent book you have dates from when?

A. I was mistaken in saying that it was dated back so far; I think it begins in 1890.

Q. The suit of your nephew, William E. McIntire, against you, being equity No. 10745, was brought prior to 1890, was it not?

A. I do not know.

Mr. MACKEY: I want no rent books which contain accounts subsequent to the institution of that suit. If you have any rent books containing accounts with your sister Martha or with Emma Taylor during the years intervening between 1880 and 1890, I would like to see them and cross-examine you in reference to them; but I want no later accounts than that.

WITNESS: The account with her would be a ledger account, strictly speaking, and I run no ledger at all.

Q. Have you any account books showing accounts with your sister, Martha McIntire, during the period between 1880 and 1890?

A. I think I have nothing before 1890. In the book I have, which I said does not contain the ledger account, the first column is for the registered number of the house; the next is for the location of the house, the next the owner of the house, and the next the various months when the rent is due and when paid.

Q. Have you any accounts showing payments of rent to your sister, Martha McIntire, during the period intervening between 1880 and 1890?

A. I had no books, but I had checks. I paid most invariably by check; then she would indorse the check and I could cash it.

Q. Have you not check books containing stubs which show what the checks were for?

A. No, sir.

Q. Would not the stubs of your check books show what the checks were for?

A. No, sir; because I drew all the rent accounts in one bank. When I drew a check on Riggs & Co. that showed it was on
670 rent accounts, because I only deposited the rents there, and then afterwards at the Second National bank.

Q. Have you any rent accounts between 1880 and 1890 showing payments to your sister, Martha McIntire, or payments to Emma Taylor?

A. I do not know whether I have or not. It would be a long job to look up those things, as there was so many checks in that period.

Q. Will you produce tomorrow, at the session of testimony to be taken in these cases, any books of account, whether rents, sales, or otherwise, with your sister, Martha McIntire, and with Emma Taylor during the period intervening between 1880 and 1890?

A. You ask me the same question, in different ways, over and over again. I have stated that I have nothing between 1880 and 1890 in the way of accounts with anybody.

Q. Will you produce any check books——

A. (Interposing.) That is to ask me to stay up all night.

Q. Then you decline to do it?

A. No, sir; if you would give me time I will do it.

Q. When do you think you can produce your check books?

A. I possibly can produce them this week if you do not take up my time.

Mr. HENKLE: You are asking him to produce evidence for you.

Mr. MACKEY: If you do not propose to produce those books you need not do it.

Mr. HENKLE: I suppose you think you are doing it for his benefit.

Mr. MACKEY: Yes; I am doing this for his benefit. Serious charges are made against this defendant. I am willing and, indeed, anxious that he may clear himself if he can, and his books would be one of the best pieces of evidence if they bear out his theory in these cases.

Mr. HENKLE: I want to say in regard to that that so far as evidence for his benefit is concerned I will try to look out for it.

Mr. MACKEY: I think this colloquy has gone far enough. I have given this defendant every opportunity to produce any books that he has to sustain him in his assertion; if he does not propose to avail himself of it, I leave the matter to be judged by the court and its effect upon his testimony.

MARTHA MCINTIRE further deposes and says, being recalled for—

Cross-examination.

By Mr. MACKEY:

Q. When you left Philadelphia in 1882, in the month of June, I think you said it was, to come to Washington to live, your whole family came here with you, I believe you stated?

A. No, sir.

671 Q. I do not mean that they came in the same train, but about the same time.

A. They all came within two or three weeks.

Q. You all about that time broke up housekeeping and came to Washington permanently?

A. Well, we expected to stay here.

Q. In breaking up housekeeping did you not sell out your property?

A. No, sir.

Q. You had no sale of any sort?

A. No, sir.

Q. Sold nothing?

A. Sold nothing at all.

Q. Did you sell any real estate about that time?

A. No, sir.

Q. Long prior to that had you a sale of any real estate?

A. I do not remember.

Q. Well, did you or not?

A. I sold some property some years before. The family did not sell it. I sold it for my father; it was a house of his, and my father was living then.

Q. You sold a house for your father?

A. Yes, sir.

Q. How long was that before you came here?

A. A good while ago. I do not remember. He died in 1876, and it was some time before he died.

Q. How long before he died?

A. I cannot remember.

Q. You had no sale of any real estate subsequent to that—that is, before you moved here—I mean subsequent to the sale you had of your father's property?

A. No sale of any property after that sale.

Q. You say in your testimony on page 133 of the record in this case that you made Barbara Brown two loans, one of four hundred dollars and one of six hundred dollars. The record shows that those loans were made before you moved here to Washington permanently. Do you remember how they were made—that is to say, did you send the money on to your brother here in a lump, or in what way?

A. I do not remember that part of it, as it has been so long ago.

Q. Where did you get the money to loan?

A. I do not remember where I got it.

Q. Do you remember how you sent it to Washington?

A. No, sir; I do not remember that, either, because, Mr. Mackey, I had been sending money on to him from time to time, and I cannot remember that particular time. I sent it to him and to my other brother.

Q. By mail?

A. Sometimes through the bank and sometimes some one of them would be on there and bring it here, and sometimes some of our folks would bring it in traveling to and from Washington
672 and Philadelphia. We had two brothers living here, and some member of the family was back and forth frequently.

Q. Sometimes you sent it thorugh the banks?

A. Yes, sir.

Q. What banks?

A. Well, when they wanted money they would send me notice through the banks, and I would go and pay it.

Q. What bank was it?

A. I do not remember the bank. It was a Philadelphia bank. I think it was on Ches-nut street.

Q. How you sent the money for these particular loans you do not know?

A. Well, I do not know about some of the other loans, either.

Q. Where did you get the money to make this loan with?

A. I do not know. I was working and saving all the time and putting mon-y together, but I cannot tell where I got each dollar that I sent.

Q. Can you tell which bank you got it out of?

A. No, sir.

Q. Do you remember whether you got it out of the savings bank or the Central bank?

A. I cannot remember now.

Q. Did you get it out of either?

A. I cannot remember.

Q. You did not keep it about your person?

A. I kept considerable in the house.

Q. You either got it out of one of these banks or out of the money you were saving at home?

A. I had to put it in bank to have it there. I do not remember whether I put it in bank or not. I did not put it in bank without they sent for it.

Q. They sent a draft?

A. More probably they came on or sent on for it; that is the way it was mostly done.

Q. But you had to get the money somewhere, in order to meet the draft?

A. I told you once before that I had some money in the house.

Q. You had this money in the house?

A. I do not say that.

Q. You had it in the house, saved up, or in one of the banks?

A. I had it somewhere.

Q. You say you had money in two banks in Philadelphia, and that you had money that you were keeping at home. Now, was there any other place in which you had money?

A. Not that I remember.

Q. Is it likely that you would have had money at any other place except at home and in the two banks?

A. Not likely.

Q. You were keeping money at home sometimes in large and sometimes in small sums?

A. Yes, sir.

673 Q. These loans were for $400 and $600?

A. Yes, sir.

Mr. HENKLE: These two loans were not made at the same time.

Mr. MACKEY: We know that.

Mr. HENKLE: So that it was four hundred dollars at one time and six hundred dollars at another time.

Q. You cannot remember where you got the money for either of these loans?

A. I cannot remember.

Q. You were frequently, you say, sending money on to Washington at that time to your brothers?

A. By some one of the family. I had three sisters. There were four of us to send money by.

Q. You were sending money by your sisters or your brothers or somebody here?

A. Yes, sir.

Q. Where did you get the money to send on by your brothers or sisters or some other person; did you get it out of the banks or from your savings at home?

A. I told you that I do not remember. If you were to ask me that question twenty times I would have to answer in the same way.

Q. I understand you to say that you frequently sent on money in that way?

A. I sent on money by whoever happened to be there.

Q. Do you remember having taken the money out of a box or pillow or wherever you had it at home and sending it on to your brothers here?

A. If I had that much money at home I sent it on to them.

Q. Do you remember drawing money out of the bank to send on to Washington by them?

A. No, sir; I do not think I drew money out of the bank to send on by them, because if I sent money from the bank I sent it through the bank here.

Q. I mean when your brother, Edwin A. McIntire, told you that he had some note here which you could purchase advantageously or some piece of property you could purchase, or what not, and you were prepared to send him on the money in order to buy the note or buy the property, how did you get that money, out of the bank or out of your savings at home?

A. Wherever I happened to have it, I suppose.

Q. Did you ever get any money out of either of those two banks to send on here to Washington?

A. I had money in Mr. De Bow's bank. I do not remember how I sent that on—that is, whether I sent that on or sent for it after we came here.

Q. You say in your testimony at page 135 of the record in this case that there was a severe rain and thunder storm which damaged this Barbara Brown property, and that your brother wrote
674 you a letter advising you to have it sold. Have you that letter?

A. I do not know whether I have or not. I do not think I have.

Mr. MACKEY: Well, now, if you have that letter I wish you would file it with the examiner without my calling upon you for it again.

WITNESS: I will look and see.

Mr. MACKEY: If you do not file it with the examiner I will conclude that you have not the letter.

WITNESS: Well, I will look when I go home and see.

Q. He also wrote you that the interest on this loan was in default, you say, on the same page of the record. If you have any correspondence with your brother whatever in respect to this property about that time will you produce and file the letters with the examiner?

A. I will look and see. I do not know whether I have or not.

Q. How did you come to sign the direction on the back of this deed of trust to sell this property?

A. I do not know.

Q. I hand you Exhibit A. H. No. 1 in this case, being the deed of trust from Barbara Brown to Edwin A. McIntire, dated June 8, 1880, and ask you when and where you signed the direction on the back of that deed to Edwin A. McIntire to sell that property.

A. I do not remember; I cannot remember now. It is my signature there. The date is there when it was signed. I do not remember when I signed it, but I know I signed it.

Q. This memorandum is dated here March 21, 1881. Is that the date?

A. I suppose so; I do not remember.

Q. You were in Philadelphia then, were you not?

A. Well, I do not remember.

Q. You do not know whether this deed was mailed to you or brought on to you?

A. I do not remember that.

Q. Now, you say in your testimony at page 137 of the record that when the property was sold you gave Barbara Brown the four-hundred-dollar note and a little money to make things square. Were you here then in Washington or in Philadelphia?

A. No, sir; I guess my brother paid it for me; he transacted all the business for me. I did not pay it to her, I know, because I never saw the woman.

Q. Do you know how much money it was that was given to her?
A. I think about one hundred dollars.
Q. How do you know that if you did not see her and did not pay it to her?
A. If my brother told me that he paid her one hundred dollars for me I believed him.
Q. That is the only way you know?
A. Believing is enough when you have confidence in the person. I have known him all my life.
675 Q. You say in your testimony at the same page, 137, of the record in this case that when the property was sold you gave her the four-hundred-dollar note. You mean that your brother gave it to her and not you?
A. I meant that it was given to her through him.
Q. Where was this house located which your father sold?
A. In the southern part of the city.
Q. What was the number of it?
A. I forget the number of it.
Q. Was it not the house your family lived in?
A. At one time.
Q. How long did you live there?
A. I do not remember that, either.
Q. Ten years?
A. I do not remember.
Q. Do you not remember whether you lived there one year or ten years?
A. I cannot remember. I lived there for some time. I know that I was a little girl and went to school while I lived there.
Q. Cannot you remember whether you lived there several years or ten years?
A. I cannot say.
Q. Was it two or three years?
A. I cannot answer that, either. I do not know.
Q. Then you mean that you lived there one month or fifteen years?
A. I lived there several years.
Q. Well, several may mean very many years.
A. Well, I have to give it up. I cannot talk to you.
Q. Do you mean by "several" years three or four years?
A. If I say three or four years or several years you will say that I mean ten or twenty years. I will say a few years, whatever that may mean to you.
Q. Did you live there one year?
A. I lived there over one year if I went to school while there.
Q. Will you venture to say that you lived there two years?
A. I lived there several years, I suppose.
Q. Did you live — more than three years?
A. I do not remember how long. That was the early part of my childhood.
Q. How old were you when you moved from there—were you a young woman?

A. No, sir; I was a school girl.
Q. Fifteen or sixteen years of age?
A. I did not keep a diary.
Q. You cannot tell whether you were fifteen or sixteen years of age, then?
A. I cannot remember.
Q. Were you less than fifteen or more than fifteen years of age?
A. I rather suppose I was less than fifteen years of age if I were a school girl.
676 Q. You never lived there since?
A. Yes, sir; we lived there a long time after that; for a year.
Q. How old were you when you lived there then?
A. I cannot remember. I was grown up.
Q. On what street was that house?
A. On Senate street.
Q. Do you remember to whom the house was sold?
A. No; I do not remember now. I do not remember the man's name at all.
Q. Now, Miss McIntire, I understand you to have said in substance during the course of your testimony in these various cases that these properties which you obtained from Emma Taylor were bought by you with your own means, and that these means were obtained by you from your savings from moneys given to you by your father and from moneys that you drew out of these two banks that you have mentioned. Is there any other source from which you obtained any other money?

Mr. HENKLE: She said from her own earnings, too.
Mr. MCINTIRE: And she said from her sisters also.
Mr. HENKLE: And she has said that she received money at the death of her two sisters. She has, with great detail, gone into the sources of her property over and over again.
Mr. MACKEY: Well, that question may be stricken out and I will refrain it. I want to have this witness answer this question:

Q. Miss McIntire, do you wish us to understand from the testimony which you have heretofore given in these various cases that these properties which you bought from Emma Taylor were bought by you with your own means, and that a part of those means was derived from moneys which you had saved up in Philadelphia, from moneys which you got out of these two banks that you have mentioned, and from moneys which were given to you by your father?
A. And from the different investments that I made.
Q. I say that part of your means was derived in the manner I have stated?
A. Yes, sir; and the houses were bought entirely with my own means.
Q. I understood that you bought with your own means. My question is directed to the sources of your means.
A. There were so many different sources.
Q. Among those sources were these: First, moneys which your

father gave you, moneys which you saved up in these two banks, and moneys which were left to you by your two sisters, as related by you in your testimony in these cases?

A. Yes, sir.

677 Redirect examination.

By Mr. HENKLE:

Q. Did you have moneys realized from the investments made by your brothers in Washington for you in real estate notes and other financial transactions?

A. Yes, sir. Well, I thought that was included in what he said.

Q. I want to ask you to state definitely and particularly whether any and how much of the money that constituted the purchase prices of the properties purchased from Emma Taylor was furnished by your brother, Edwin A. McIntire.

A. It was all my own money. He furnished none.

Mr. MACKEY: I object to this line of redirect examination because this testimony has been gone into before.

Q. I want to know whether anybody, and, if so, who, furnished any part of the money with which you purchased these properties from Emma Taylor.

A. Nobody helped me at all; it was all my own money.

Q. In the course of your cross-examination you stated that your brother may have advanced some money for you on account of this Barbara Brown property. I want to know whether, if he did so advance money for you, it was reimbursed to him by you or not.

A. Yes, sir; what he paid for me I paid him back and had everything all square.

MARTHA McINTIRE.

* * * * * * *

(Adjourned.)

JUNE 30, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who further deposes and says, being recalled for recross-examination.

By Mr. MACKEY:

Q. I show this Exhibit A. H. No 22, filed in this case as well as in the Hayne case, being a paper purporting to be a bill of Mr. J. T. Coldwell to you, the first item of which is dated February 19, 1881, to auctioneer's services for sale of west half of lot 10, in square 389, to W. W. Anderson, $525 00, being $16.50, and containing other items, footing up $83. Did you pay that bill on presentation?

A. I am not able to say at this time whether it was paid on presentation or whether it had been advanced to him on loans made to him from time to time before that, because it was customary for me to loan him money, and frequently those loans would be cancelled by bills brought in. Mr. Coldwell and I were very intimate for a great many years.

Q. Have you your check book for the date of the last item on this bill—that is, September, 1882?

A. I am not certain whether I have or not. I have been
678 working since our last session in looking over checks that were thrown into my cellar at the time I moved from F street to C street, and I find them in a confused condition, damp and mouldy.

Mr. MACKEY: If you find that check book or the check I wish you would hand it to the examiner, and I may want to ask you some questions about it.

WITNESS: I would like to have that privilege in reference to any of these cases.

Mr. MACKEY: Any paper that you find which I have called for you may have the privilege of filing upon my cross-examination of you in regard to it.

Q. When did this fire take place in your office which you have spoken of?

A. Shortly before I moved my office into my house on C street.

Q. What year was that?

A. I think it was in 1890.

Q. Was it much of a fire?

A. It was a fire only confined to the inside of the office.

Q. What did it burn?

A. My waste-paper basket, several papers and books in that vicinity, and it scorched my desk.

Q. Where were the books that were burned?

A. They were stationed alongside of the desk—that is, on the floor alongside the desk.

Q. Alongside your waste-paper basket?

A. Yes, sir.

Q. Is that where you keep your books of account—alongside your waste-paper basket?

A. Yes; during the day.

Q. Who was clerk in your office at the time of the fire?

A. My sister, Emma T. McIntire. She was my clerk until I closed my office on F street.

Q. Did you have any other person than your sister, Emma T. McIntire, clerking for you at that time?

A. Not to my recollection now.

Q. What time did you say that was?

A. Shortly before I moved from my office on F street.

Q. I mean the date.

A. I could not give you the date. I have no memorandum of it.

Q. You cannot fix the date when you moved from your office?

A. I cannot tell now. I can by referring to memoranda that I have.

Mr. MACKEY: It is very important. I wish you would furnish the examiner with the date when you moved from your office.

WITNESS: I will do that.

Mr. MACKEY: And the date of the fire.

WITNESS: That I do not know that I can give you. I know it was a short time before I moved from there.

679 Q. What do you mean by "a short time"—within a month or two?

A. Yes, sir; within a month or two.

Q. Was any alarm given about the fire?

A. None that I know of.

Q. What time of day did the fire take place?

A. Early in the morning.

Q. Before you got to the office or afterwards?

A. After I got to the office.

Q. You mean between 9 and 10 o'clock in the morning?

A. Somewhere about that time.

Q. Were you and your sister in the office?

A. I am not certain whether she was there or not.

Q. Were you in the office?

A. Yes, sir; I put the fire out.

Q. How did the fire take place?

A. I think from a cigar thrown into the waste-paper basket.

Q. Although you were in the office, you did not discover that fire until it had burned up all your books?

A. I did not say that. It burned the books and papers in the vicinity of the waste basket and come near setting fire to the building and burning me too.

Q. Your office at that time consisted of a small room, did it not?

A. You might call it two small rooms.

Q. About what were their sizes?

A. About thirteen by forty feet.

Q. Forty feet was the length of the building?

A. Yes, sir. I have given the dimensions of the whole.

Q. About what were the dimensions of the front room?

A. There were not two small rooms, although spoken of sometimes here as two rooms. There was only one room really, divided by a high desk.

Q. Your business portion of the office was in the front?

A. Yes, sir.

Q. Where was this waste-paper basket; in the front or in the rear?

A. In the rear, by my desk.

Q. Where was your desk, in the rear?

A. Yes, sir.

Q. Did anybody have access to the rear of your office?

A. Certainly. I had customers in there from time to time.

Q. Was anybody in there early in the morning?

A. I presume so. I do not know now.

Q. This waste basket was alongside of your desk, in the rear part of the room?

A. Yes; alongside of the desk that I sat down to. There was a desk in the front part of the room which I stood up to.

Q. You were not attracted by the smoke?

A. No, sir; because smoke very often blew in there from the chimney on the adjoining house.

680 Q. And you did not discover the fire in time to save your books and papers?

A. No, sir. The fire got such headway that it destroyed my books and a number of papers.

Q. What sort — a book was it?

A. One was a book like this one (showing book measuring 8 x 14 inches and containing about 400 pages), with not so heavy a cover.

Q. Was there more than one book?

A. Yes, sir.

Q. How many?

A. I do not know.

Q. You do not know how many books you lost by that fire?

A. No, sir.

Q. You do not know what accounts books you lost?

A. No, sir. They were all old books, upon which I did not put much value.

Q. How many were there?

A. I just told you that I do not know.

Q. Was there more than three?

A. Yes, sir.

Q. Were there four?

A. I do not know how many there were.

Q. Half a dozen?

A. There might have been twenty; I do not know. There were quite a number like that book. I could not tell whether there were twenty or a dozen or a half a dozen.

Q. How many like your ledger?

A. Only one.

Q. Was that ledger completely burned up?

A. Yes; all except the back of it, except where the stitches run into the back. This is the back of the book (indicating); I do not call the covers the back of the book; the covers were not burned up, but were destroyed.

Q. How long did the fire last in your office?

A. I did not time it.

Q. Well, five minutes?

A. It lasted until it destroyed those things.

Q. Did that take five minutes?

A. Yes; it took longer than that; it took so long that I was burned and my desk was burned.

Q. Ten or fifteen minutes?

A. Yes, sir; it must have taken longer than that, because it got under headway before I discovered it.

Q. You think it took half an hour?

A. I do not say; I do not know.

Q. It took less than a half hour and over fifteen minutes?

A. I am not able to swear to that.

Q. You can give no estimate of the time?

A. No, sir; I was excited at the time; my property was burned and I was burned myself.

Q. The fire in the waste-paper basket originated that way?

681 A. I think so.

Q. Was any alarm caused by it?

A. Not that I know of.

Q. Did anybody else beside yourself see that fire?

A. Yes, sir; some persons ran in.

Q. Who were they?

A. I do not know.

Q. Neighbors come in?

A. Yes, sir.

Q. You do not know who the neighbors were that came in there to see that fire?

A. No, sir; I did not know that I would be questioned about it and I dismissed it from my mind. I thought it was my own business and dismissed it from my mind. I think still it was my own business, as nobody else was damaged but me.

Q. Was that your current ledger at that time?

A. It was a book similar to this one that I have here.

Q. It was your current ledger?

A. You may call it such if you like; I do not call it that.

Q. I mean that it was the ledger you used at that time to enter your accounts in?

A. No, sir; it was an old book that I used before that, because I think I had started this one at that time.

Redirect examination.

By Mr. HENKLE:

Q. Mr. McIntire, how long were you in the real-estate business on F street?

A. I was in partnership with Mr. Warner when we moved to F street, in 1876 and in 1878; then I opened an office for myself.

Q. Where did you open your office?

A. At No. 918 F street northwest.

Q. And you continued there until you went to C street?

A. Yes, sir. The property in which I had my office on F street was sold and torn down.

Q. Who attended to the department of your business relating to the collection of rents?

A. Various clerks whom I employed from time to time. I never gave it any attention at all myself.

Q. Well, was your attention called to it at times by the clerks?

A. Sometimes when anything special occurred they asked me in regard to it, but in the majority of cases I did not know anything at all about what was going on in the rent department.

Q. You did not keep the current rent business in your mind?

A. No, sir; I did not know the tenants when they came in, and often I did not know the landlords.

Q. What was the effect of the fire you have been speaking of upon the books and papers in your office?

A. Well, the effect was only upon those papers & books laying around my desk. It was a desk very similar to the one that
682 the examiner is writing on now. At the right hand on the floor was my waste-paper basket, and immediately behind it was a pile or a number of books not then in use. There was quite a number similar to this one I hold in my hand, bound with paper, very thin paper inside, containing memoranda of the office work.

Q. And those were destroyed?

A. Quite a number of them were destroyed; papers that I had also lying around there were destroyed, and a number of papers on my desk were destroyed, and the desk itself was damaged so that I have not been able to use it since.

Q. What was the effect upon the papers and books not destroyed?

A. Quite a number of them were smoked and quite a number of them were partly destroyed, so that they were of no use as evidence of anything?

Q. When you moved your office to C street, what did you do with the old papers and books in your office?

A. Well, my office on C street is smaller than the one I had on F street. Quite a number of my books and papers were packed in a dry-goods box and carried to C street, and when they reached my premises they were thrown off there and the packages became mixed up considerably, and since that time they have been in my cellar. I have been looking over them for the past two or three days for books and checks, but some of them are so mouldy and damp that I cannot identify them.

Q. What has been the occasion of your looking at them in the last few days?

A. At the last session Mr. Mackey asked me for papers preceding the time that I stated the fire took place or about that time, and my sister, Emma T. McIntire, who was formerly my clerk, has been looking for checks given to my sister, Martha McIntire, for rents.

Q. What has been your condition of health for the last several months?

A. Nearly ever since these suits have been going on I have been in poor health and unable to attend to my business; quite considerable of the time kept to my bed, and nearly all the time under the doctor's care. I am now fatigued by examination for papers for the last day or two in these cases, and I ought to be in bed today.

Q. You mean that you have not been able to give to the search for these papers the attention that you might otherwise have done?

A. If I had been in good health and had help I should have had all my papers examined by this time.

Q. Have you given as much attention to it as you could in your condition of health?

A. Yes, sir; it is my desire to furnish all the papers that I can find and which I ought to furnish.

Q. You were asked by Mr. Mackey the other day to produce any

checks for rents collected by you and paid to Emma Taylor. Have you been able to find any such checks?

683 A. I have not been able to find any yet.

Q. Have you searched?

A. Yes, sir; but I have not gone back quite so far as the time of my operations with her. I commenced at the time I moved, and have been looking backward, and my search has reached 1885 or about there.

Q. You were also asked to find and produce checks that you paid to Martha McIntire for rents of her properties. Have you looked for those?

A. Yes, sir; I have found quite a number since 1885, as far back as my search has extended so far.

Q. I hand you a parcel of checks which you gave me this morning and ask you to state what they are, and give them in detail to the examiner.

A. These are checks drawn by me to the order of Martha McIntire on Riggs & Co. for payment of rents as follows: March 6, 1885, $59.56; August 14, 1885, $136.08; Sept. 11, 1885, $76.50; Sept. 24, 1885, $41.30; Oct. 22, 1885, $69.40; Nov. 14, 1885, $41.85; Feb. 15, 1886, $91; March 29, 1886, $57.35; June 19, 1886, $64; July 8, 1886, $39.75; Sept. 16, 1886, $67.70, and Jan. 7, 1887, $276.42.

Q. What is the aggregate?

A. They aggregate $1,020.91.

Q. These rents were confined to what year?

A. 1885, 1886, and I think one check in 1887.

Q. What were these moneys for?

A. For rents collected for my sister, Martha McIntire.

Q. Upon what properties?

A. All the properties from which I collected rents for her; among others, these in dispute here or such as were under rent at that time.

Q. Did these checks cover all the rents which you collected for your sister, Martha McIntire, in the years 1885 and 1886 and January, 1887?

A. So far as I am able to say now, they are all the checks I could find in those years.

Q. Were the rents paid to her as fast as collected or were they allowed to accumulate for some little time?

A. From time to time as she came to my office I would pay her the money.

Q. Did she get the money on those checks from the bank or from you?

A. I think on nearly every one, if not every one, she got the money from me. I could tell by looking at the checks. Where the checks are stamped "R. T." on the face I think she got the money on the check from me, because that "R. T." is stamped by Riggs & Co., indicating that the check was deposited by me with the receiving teller, and I got credit for the amount. I would not have deposited them with him unless I paid the money for them.

Q. What properties did these rents come from?

A. No. 408 11th street southeast, known as the Ackerman
684 property in these suits; First and Q streets, known as the Eller property. I do not think anything came from F St. or the Madison Alley property, known as the Pryor property, because she had not built at the time those checks were given, I think; I am not positive about that, however; I cannot tell without referring to data, and these rents were also from other properties not mentioned in these suits. The Southey property, No. 2112 I street, was also covered. I had forgotten that.

Q. Did it cover the Hayne property?

A. No, sir; Martha McIntire had nothing to do with the Hayne property. No. 1216 I street northeast, known as the Brown property, was also covered.

Q. Mr. Mackey asked you to produce the book of your current business. Have you produced it?

A. I have produced two books which I call rent books; one in the shape of memoranda, running back to October, 1889, and the other being an ordinary rent book, commencing January, 1890.

Mr. HENKLE: Do you desire, Mr. Mackey, to look at these books?

Mr. MACKEY: I do (examining books).

Q. How far back do these books go?

A. One of them runs back to October, 1889, and the other to January 1st, 1890.

Mr. MACKEY: They are not the books I called for at all I object to them as being subsequent to the institution of the suit by William E. McIntire against Edwin A. McIntire, being equity No. 10745, in the supreme court of the District of Columbia, in which the identity of Emma Taylor was questioned. The books I called for were the account books running over the period from 1882 to 1886.

Mr. HENKLE: What do you mean, rent accounts?

Mr. MACKEY: Rent accounts and other accounts with Emma Taylor and Martha McIntire during that period.

Q. Mr. McIntire, have you any books relating to rents collected for your sister, Martha McIntire, or Emma Taylor—that is, containing rent accounts with your sister, Martha McIntire, or Emma Taylor between the years 1880 and 1890?

A. I have nothing except it might be a memorandum book or two similar to this one which I have here, containing the name of the tenant, description of the premises rented, and the amount paid by the tenant. I have no ledger account with any one during that period. My ledger was destroyed, as I have said a number of times. As to my check books, they would not show that they were for rents. I seldom state on my check books what the checks are drawn for. If a check is drawn on Riggs & Co. I know what it is for, because I never had anything but rent accounts with Riggs & Co., as I have since with the Second National bank.

Q. Have you been able to find any books responding to the call of Mr. Mackey made upon you for the period between 1880 and 1890?

A. No, sir.

Q. Have you looked for them?

A. I have been looking, but I have not finished my ex-
685 amination. I think I can state positively that I have no such books. My sister, Emma T. McIntire, and I got those all out day before nesterday, all that were there, but quite a number we could not reach. I never preserved these books anyway after a little while, a year or two.

Q. What do you do with them?

A. Quite a number of them were burned up.

Q. You burned them up?

A. Yes, sir; to keep from crowding my office. The book spoken of was not strictly a ledger. It was similar to this one, but strictly speaking it was not a ledger. It was strictly a ledger with the tenants, but not with the landlords; that book I intended to preserve. The other memorandum books I do not preserve, but that one was unfortunately destroyed. This one that I hold in my hand runs back to 1890.

Mr. MACKEY: I object to any testimony as to what that book shows, being testimony *post litem motam.*

WITNESS: This book runs back to 1890, as I say, showing an account, among other things——

Mr. MACKEY (interposing): I want to enter an objection to any testimony of the witness in regard to that book unless it is offered in evidence.

WITNESS: This book I hold in my hand runs back, as I was saying, to 1890, and contains the account of rents collected from the time the houses on F street on the lot known as the Pryor lot were first built. The book that was destroyed showed no account whatever of the rents of those houses, because the houses were not built then.

Mr. HENKLE: These books are here given in evidence.

Mr. MACKEY: I object to this manner of offering a book in evidence unless the book is handed to the examiner to be filed with his record. We also object to the books for the reasons heretofore given, that they are evidence *post litem motam.*

Cross-examination.

By Mr. MACKEY:

Q. You say that you gave these checks to your sister, Martha McIntire?

A. Yes, sir.

Q. For rents collected from these properties which are in dispute here—the Brown property, the Hayne property——

A. (Interposing.) Not the Hayne property.

Q. It does not include the Hayne property?

A. She never had anything to do with the Hayne property.

Q. Well, the Brown property, the Southey property, the Eller

property, and the Ackerman property—these are the rents for those four properties?

A. Well, that among other rents collected for her from other property.

686 Q. What other properties did she own?

A. 205 6th street northeast, in this city.

Q. What did that rent for?

A. In the neighborhood of twenty dollars.

Q. Did she own any other property?

A. She owned property on South Carolina avenue.

Q. At this time?

A. Yes, sir. I am not certain about her owning 205 6th street northeast at that time. She has owned it for several years; whether in 1885 I could not say, but she owned a house on South Carolina avenue at that time.

Q. What did that rent for?

A. Five dollars a month.

Q. Any other properties?

A. Yes.

Q. What others?

A. I could not tell without referring to my papers.

Q. But you can tell that these checks include the rent of these properties which I have mentioned in dispute here. Now, what did those properties rent for?

A. Well, the property known as the Pryor property was not built then.

Q. What did the Ackerman property rent for?

A. About six dollars a month.

Q. What did the Eller property rent for?

A. For about the same.

Q. What did the Brown property rent for?

A. For about the same.

Q. About six dollars a month?

A. Somewhere in that neighborhood. I could not tell accurat-ly without referring to my checks.

Q. That makes eighteen dollars a month, so far, with the five dollars for the South Carolina Avenue property, making twenty-three dollars. Well, now, does this include all the rent that you paid her for that period?

A. No; I could not say that. Those are all the checks I find.

Q. Where did you get these checks?

A. In a box in my cellar.

Q. You found them in a package of checks?

A. I found them in a package of papers all mixed up.

Q. You found a package of checks covering this period?

A. No, sir; I found them amongst a package of checks and papers all mixed up together in this box.

Q. These checks were deposited by you, were they not?

A. Some of them were.

Q. Were not all of them deposited by you?

A. I could not state positively.

Q. Look on the back of these checks and see if there is one of them not endorsed by you.

A. That is not positive proof that I deposited them. I can state that all those marked "R. T." were deposited by me.

687 Q. Did you give her the check or take it yourself when you drew these checks to her order?

A. My custom for years was to draw checks to her order and cash them myself.

Q. And that is the way you did these checks?

A. I could not say.

Q. Is not your indorsement on the back of every one of those checks—that is, indorsed by you subsequent to the indorsement of Martha McIntire?

A. They are.

Q. Well, being indorsed by you, that indicates you drew the money on the checks?

A. No, sir; it does not.

Q. What would you indorse them for?

A. For various reasons.

Q. Give us some of the reasons.

A. To guarantee her signature if she were going to the bank herself, or to guarantee her signature if she gave the check to somebody else. Those are two reasons.

Q. That is the way you give out checks?

A. Yes, sir; and today I do it.

Q. She indorses first and you indorse after her?

A. Yes, sir.

Q. Was she not well known as Riggs's bank?

A. No, sir.

Q. Did she not draw checks there for a long time?

A. I do not know. I do not know that she ever drew one there, but, if I knew whether she drew checks there or not, I could not answer your question as to her being well known there.

Q. Do you swear that you did not draw the money on those checks?

A. I do not mean to say anything about that, because I have no recollection about it; I cannot remember about that in this lapse of time as to what I did in those days, but my custom was with a person whom I knew very well, if I had money in the office, to draw my check and cash the check, and I do that to the present day.

Q. I do not care for your custom. I want to know whether your sister, Martha McIntire, was at the office when you drew up those checks and when you gave them to her.

A. I could not say whether at my office or at her house. Usually I paid them to her in my office.

Q. She indorsed them and then you indorsed them?

A. No, sir; not at the same time, if that is what you mean. She indorsed them when I paid her the money. If she took the check to draw the money herself—I do not know whether she did or not in some instances, but with some persons I would draw the check and then cash it, and sometimes I did not. I do not know what her

custom was; if she did that, I naturally indorsed the check to guarantee her signature. There is nothing unusual about that; I do that every day; I did it this morning.

Q. Do you say that you did not deposit these checks yourself?

688 A. I did not say that.

Q. What do you say about it?

WITNESS: Whether I deposited them or not?

Mr. MACKEY: Yes.

A. I do not say anything about it. I do not know.

Q. Did you have any account at the Central National bank?

A. Yes, sir.

Q. Look at these checks, dated respectively March 6, 1885; Sept. 11, 1885; Oct. 22, 1885; Nov. 14, 1885; Sept. 16, 1885, and Jan. 7, 1887, and state if you did not deposit them at the Central National bank after your sister, Martha McIntire, has indorsed them.

A. There is one which is dated Jan. 7, 1887, but as to the others I am not able to say.

Q. What is that stamp of the Central National bank doing, then, on the back of the checks?

A. You will have to ask the bank.

Q. Do not those stamps indicate that the Central National bank paid those checks—that is, do they not read that way?

A. Some of the stamps are very indistinct.

Mr. MACKEY: That is not indistinct.

WITNESS: Yes, it is. I see the word "Central" there; that does not indicate anything in regard to me; that means that the Central National bank had these checks in there and paid them.

Q. Paid them to whom?

A. I do not know. I think Mr. Ruff, the cashier, who was a friend of mine, would have paid any ordinary check of mine presented there by anybody.

Q. Paid without the indorsement of the party to whom it was paid? Would not the last indorsement be the name of the party to whom the Central National bank paid the check?

A. Not necessarily so.

Q. Your name is the last indorsement on there?

A. It seems to be.

Q. Does not that mean that the Central National bank paid you the money?

A. No, sir; it does not; not according to my understanding of the case.

Q. These other checks, dated respectively Sept. 24, 1885; Feb. 15, 1886; March 29, 1886; Jan. 19, 1886; June 19, 1886; July 8, 1886, and August 14, 1885, are all marked "R. T.," meaning receiving teller, as you have explained in your testimony-in-chief. That shows that these checks marked "R. T." were deposited by you with the receiving teller in Riggs' bank?

A. That is my understanding of that mark. I am not positive, but that is my understanding of the mark.

Q. So that on these checks marked "R. T." you got the money?

A. No, sir; I do not say that at all.
Q. Did you not deposit them with the receiving teller?
A. Yes, sir; but I do not get money when I deposit the check.
689 Q. But you get the credit?
A. Yes, sir; but that is not the money.
Q. You make the distinction between getting credit for a check upon deposit and getting the money?
A. Yes, sir.
Q. As to the rest of those checks, you will not swear that the Central National bank did not pay you the money?
A. I will not swear to it.
Q. You do not know what that mark on the checks means?
A. No, sir.
Q. Do you not know that means that the Central National bank paid you the money?
A. If it says there by that mark that it was paid by the Central National bank it means that the bank paid the checks, but not to me necessarily.
Q. Do you not know, as a man of business for many years and having dealings with banks and having bank accounts, that when the check of a depositor is presented for payment the bank requires the party to whom the check is paid to indorse his name upon the check?
A. It seems to me that you are getting out of your latitude. That is not the check of a depositor.
Q. Never mind about my understanding about banking business. I am asking you if you do not know that that is the custom of the banks.
A. No, sir. Your question shows your ignorance of the banks.
Q. The invariable custom?
A. No, sir.
Q. Then you say that the fact that your name, E. A. McIntire, being the last indorsement upon these checks which are stamped on the back "Central National bank, paid," does not indicate that the Central National bank paid you the money?
A. It indicates nothing more than that I guaranteed the signature of the preceding indorser, according to my understanding of it.
Q. Here is a check for $67.70, dated September 16, 1886, drawn to the order of Martha McIntire, indorsed by her, and then indorsed by you and stamped on the back "Central National bank, paid," and on Jan. 7, 1887, a little over three months, you paid her $276.42. Is that true?
A. If the check says so it is true.
Q. Well, does the check say so?
A. This check is dated Jan. 7, 1887.
Q. Did you pay her that money?
A. I paid it to her by my check.
Q. How did it come to be payable to you?
A. I would not destroy the check after cashing it.

Q. You gave her the money on the check and then deposited the check to your own credit?

A. Certainly.

Q. How did you come, after paying her up on September
690 16, 1886, to pay her $276.42 for rents a little over three months afterwards?

A. I do not say that I paid her to any particular date at all.

Q. Did you pay her any part of that $276.42 when you paid her the $67.70?

Q. I could not answer you that question. You know very well that I cannot answer that question, for I have no books here to refer to. I said that only checks on Riggs & Co. showed payments made to her for rents.

Q. At the rate of $20 per month that amount would represent over a year's rent, would it not?

A. Yes, sir; but in your calculations as to rents received by her you omit to include the Southey property.

Q. What did the Southey property rent for?

A. Sixteen dollars or seventeen dollars a month.

Q. You are sure of that?

A. Yes, sir; somewhere about that neighbood.

Q. What is it rented for now?

A. About twenty dollars a month, I think. Answering further in regard to that other check you handed me awhile ago, dated September 16, 1886 (or any of these checks), drawn to the order of Martha McIntire and marked on the back, "Central National bank, paid Sept. 20, 1886" (I guess it is), that could be paid to Martha McIntire. If Martha McIntire presented that to that bank they would pay it to her upon the indorsement upon it, taking my signature after hers as guaranteeing that it was her signature, or it might have been paid to my other sister.

Mr. MACKEY: I do not want to know what might have been.

WITNESS: You ask so many ridiculous questions that I cannot answer otherwise.

Redirect examination.

By Mr. HENKLE:

Q. These checks which Mr. Mackey has been canvassing with you, I understand you to say, were all for moneys that were in your hands at the time these checks bear date, belonging to your sister, Martha McIntire, on account of rents collected from her various properties?

A. Yes, sir.

Q. Every bit of them?

A. Yes, sir; every dollar of them.

Q. Do I understand you to say that she at that time had other properties than those which are in litigation in these several suits and for which you collected rents?

A. Yes, sir; she has owned several small houses and owns others at the present time besides these.

Q. Are you able to distinguish from these checks the particular properties from which the rents making up these aggregate sums were collected?

691 A. No; I am not. The book which contained the memorandum which would enable me to make up that account is destroyed.

Q. But you do say that all these moneys were in your hands as agent for your sister, and were the results of rents collected on account of her several properties?

A. Yes, sir; I never put a dollar in the bank of Riggs & Co. except from the collections of rents. A check of mine drawn on Riggs & Co. meant for rent, and if for anything else it was drawn on some other bank.

Q. These checks are genuine checks and were made by you?

A. Yes, sir; and they are all signed by her, and that is her genuine signature.

Q. And the moneys were received by her on account of rents?

A. Yes, sir.

Q. Is there anything else you wish to say in regard to this matter?

A. Nothing else in regard to this particular matter.

Mr. HENKLE: I here give in evidence the twelve checks heretofore produced and referred to by the witness, Edwin A. McIntire, being Nos. 1799, 2042, 2074, 2096, 2137, 2173, 2308, 2371, 2492, 2519, 2608, and 2757, drawn by Mr. McIntire on Riggs & Co. to the order of his sister, Martha McIntire.

(NOTE.—And the same are herewith filed in evidence and marked respectively Exhibits Nos. 10 to 21, both inclusive.)

EDWIN A. McINTIRE.

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REBUTTAL.

Testimony for Plaintiffs in Rebuttal.

SEPTEMBER 15, 1893.

* * * * * * *

Harry M. Fitzhugh.

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Direct examination.

By Mr. MACKEY:

Q. What is your occupation?

A. I am a bill clerk in the assessor's office.

Q. In the office of the collector of taxes for the District of Columbia?

A. Yes, sir.

Q. Are you familiar with the books of record there?

A. Yes, sir.

Q. Have you made an examination of the tax records in that office for the years 1882, 1883, and 1884 for the purpose of ascertaining

by whom the taxes were paid upon certain real estate, namely, sublot 36, square 1002; part of lot 21, square 77; parts of lots 21 and 22, square 569; part of lot 31, square 388; sublots 156 and 157, square 615, and sublot 21, square 982, all in the city of Washington?

A. Yes, sir.

692 Mr. MACKEY: I here incorporate in the record the following mem.:

For the year ending June 30, 1882.

Square.	Lot.			
1002	Sub	36,	assessed in name of Barbara Barnes.	Paid by check of E. A. McIntire dated Nov. 29, 1881.
77	Part of	21,	" " " " George Wick.	
569	Part of	21,	assessed in name of Mary C. Pryor.	Paid by check of E. A. McIntire dated June 31, 1882.
"	Part of	22,	" " " " " "	
388	Part of	31,	assessed in name of Emily Bowen.	
615	Sub	156,	assessed in name of Margaret Eller.	
"	"	157,	" " " " " "	
992	Sub	21,	Annie M. Ackerman.	Paid by cash.

For the year ending June 30, 1883.

77	Part of	21,	assessed in name of Geo. W. F. Swartzell.	Paid by check of E. A. McIntire dated Nov. 25, 1882.
388	Part of	31,	" " " Laura Bowen.	
569	Sub	21,	" " " Mary C. Pryor.	
"	"	22,	" " " " "	
615	Sub	156,	" " " Margaret Eller.	
"	"	157,	" " " " "	
992	Sub	21,	" " " Annie M. Ackerman.	
1002	Sub	36,	" " " Emma Taylor.	

For the year ending June 30, 1884.

77	Part of	21	
276	Sub	81	
569	Part of	21	
"	" "	22	Assessed in name of Emma Taylor.
615	Sub	156	
"	"	157	Paid by check of E. A. McIntire, May 21, 1884.
992	Sub	21	
1002		36	

For the year ending June 30, 1882.

1002	Sub	36,	assessed in name of Barbara Barnes.	Paid by check of E. A. McIntire dated Nov. 29, 1881.
77	Part of	21,	" " " George Wick.	
569	Part of	21,	assessed in name of Mary C. Pryor.	Paid by check of E. A. McIntire dated June 31, 1882.
"	Part of	22,	" " " " "	
388	Part of	31,	assessed in name of Emily Bowen.	
615	Sub	156,	assessed in name of Margaret Eller.	
"	"	157,	" " " " "	
992	Sub	21,	Annie M. Ackerman.	Paid by cash.

For the year ending June 30, 1883.

77	Part of	21,	assessed in name of Geo. W. F. Swartzell.	Paid by check of E. A. McIntire dated Nov. 25, 1882.
388	Part of	31,	" " " Laura Bowen.	
569	Sub	21,	" " " Mary C. Pryor.	
		22,	" " " " "	
615	Sub	156,	" " " Margaret Eller.	
"	"	157,	" " " " "	
992	Sub	21,	" " " Annie M. Ackerman.	
1002	Sub	36,	" " " Emma Taylor.	

For the year ending June 30, 1884.

77	Part of	21	
276	Sub	81	
569	Part of	21	
"	" "	22	Assessed in name of Emma Taylor.
615	Sub	156	
"	"	157	Paid by check of E. A. McIntire, May 21, 1884.
992	Sub	21	
1002		36	

693 Q. What is the paper which I have just incorporated in the record of the testimony in this case?

A. It is a schedule made by me of the properties named, showing by whom and when the taxes upon the property were paid for the years 1882, 1883, and 1884, and showing in whose names the properties were then assessed respectively.

Q. As to the payment of the taxes on the properties in squares 388, 569, and 615, do you mean that all of that was paid at one time by a single check dated June 31, 1882?

A. Yes, sir.

Q. So also as to square 77 and 1002—that is, the taxes on the properties in those squares were paid by a single check, dated November 29, 1881?

A. Yes, sir.

Mr. HENKLE: You do not mean payment of the taxes for 1881?

WITNESS: That was the proper time to pay the taxes for the year 1882 without penalty.

Q. The taxes for the year ending June 30, 1883, on all the properties mentioned appear from your statement to have been paid by a single check of E. A. McIntire, dated November 25, 1882. Is that correct?

A. Yes, sir; in payment of the taxes for the year 1883.

Q. This name of "Barbara Barnes," whose name is given as the person to whom the property in square 1002 was assessed, was afterwards altered, was it not?

A. Yes, sir; I read it "Barbara Barnes," but some one said that it was "Barbara Brown," and I said that I must follow the book, which shows the name of "Barbara Barnes."

Mr. MCINTIRE: Barnes is right. There is no error about that.

Mr. MACKEY: Was her name "Barnes"?

Mr. MCINTIRE: No; it was assessed in the name of "B. Barnes," another person who owned the property before Barbara Brown did.

WITNESS: As to sublot 21, square 992, which I find in the name of Annie M. Ackerman, the taxes were paid in cash. The office of the collector of taxes takes no notice by whom taxes are paid in cash, so that we cannot tell who paid the taxes on that property. I have put it as the book shows, by cash.

Q. That was in 1882?

A. Yes, sir.

Q. But in 1883 the taxes on that property were paid by the check of E. A. McIntire, dated November 25, 1882—that is, the taxes on

that property for the year ending June 30, 1883, were paid by the check of E. A. McIntire, dated November 25, 1882?

A. Yes, sir.

Q. And the taxes on that property for the year ending June 30, 1884, were paid, together with other property assessed in the name of Emma Taylor, by the check of E. A. McIntire, dated May 21, 1884?

694 A. Yes, sir.

Mr. HENKLE: Cross-examination waived.

HARRY M. FITZHUGH.

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(Adjourned.)

SEPTEMBER 20, 1893.

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John G. Ames.

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Direct examination.

By Mr. MACKEY:

Q. Dr. Ames, what is your occupation?

A. My official title is that of superintendent of documents in the Department of the Interior.

Q. As preliminary to a question which I intend to propound to you, I will ask you what is the United States "Blue Book"?

A. There is no document known officially as the "Blue Book;" it is a popular name given to the official register of the United States which is published biennially.

Q. It contains a list of employees of the Government, does it not?

A. That document is supposed to contain a list of all officers and employees of the Government.

Q. I will ask you whether it contains or purports to contain a list of the employees of the Government in the city of Washington during the years designated by the document.

A. The law requires that each head of an executive department shall file with the Secretary of the Interior a list of all the employees of his department and the subordinate bureaus and officers thereof which are in the employ of said department on the first day of July in every odd year.

Q. Has there been such a compilation during the years 1881 and 1883?

A. In the years 1881 and 1883 a register of the several departments was published as of the date of July 1st; the law does not require the heads of the several departments to supply the names of employees who may have been in the employ of the Government during the previous year, but only upon the specified date.

Q. That is to say, if they were in the employment of the Government on the 1st day of July in those years their names would appear in this book popularly known as the "Blue Book"?

A. Yes, sir.

Q. Now, have you examined those books for the years 1881 and 1883 for the purpose of finding whether it shows the name of Emma Taylor as an employee of the Government in the city of Washington?

A. I have very carefully examined the index of the register for the years 1881 and 1883 with reference to that name, but do
695 not find any record of the same in any department of the Government as employed in the city of Washington.

Mr. HENKLE: Cross-examination waived.

JOHN G. AMES.

* * * * * * *

William G. Johnson.

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Direct examination.

By Mr. MACKEY:

Q. You are a member of the bar of this District?

A. Yes, sir.

Q. You are solicitor of record, I believe, in the case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, in the supreme court of the District of Columbia?

A. I did file a suit of that title.

Q. And you have, I believe, conducted the litigation in that case?

A. Yes, sir; as far as it has progressed. I am the only solicitor in that case.

Q. In the joint answer of Edwin A. McIntire and Martha McIntire filed in this case of Elizabeth Brown *vs.* Edwin A. McIntire *et al.*, equity, No. 12977, in the supreme court of the District of Columbia, in answering one of the interrogatories in the bill in that case, they say: "We are informed and believe and so charge, in regard to this suit and the several suits also recently filed by the same solicitors (to wit, equity causes Nos. 12761, 12978, 12979, 13034, 13035, 13177), that not one of said suits were instituted at the instance of the complainants themselves, but that the solicitors who filed the bill in this cause and the other bills named have acted in connection with or at the suggestion of the solicitor who filed a bill of a similar nature (equity No. 10745) and who we believe to be actuated solely with a desire to damage the reputation of these defendants and prejudice the courts against them in their defense of the matters involved in the settlement of the estate of David McIntire, deceased." I wish to ask you whether or not you knew anything about these several suits here mentioned before they were brought.

Mr. HENKLE: This is not rebuttal of anything offered on the part of the defendants and therefore I object to it.

A. The statement which you have read is an unmitigated falsehood and fabrication. I had no knowledge of the fact that any such suits had been brought or were to be brought, or that there were any circumstances or occasion for bringing any such suits until after they had been instituted, with the exception, possibly, of a suit that

I knew was to be brought—but I do not know whether it has been brought or not—of a woman named Pryor—a colored woman—who now sits in this room and who was brought to me by Mr.
696 William W. Boarman with the request that I would take part in the case with him as associate counsel, but, my other engagements preventing me from doing anything in the case, Mr. Boarman relieved me from the matter and I do not know whether he ever brought a bill or not. That is the extent of my knowledge of anything about the suit. Since the suits have been brought I have been informed by Mr. Franklin H. Mackey that he had brought suits of that character, and he has told me some facts that he discovered in connection with them. I do not know the names of any of the parties, nor do I know the parties and would not know them if I were to see them, except the Pryor woman, whom I met as I have stated. I know the McIntires when I see them. I ought further to state, as I have been called on in this matter, that when I was informed by Mr. Mackey of the statements contained in this answer and in an answer in another suit I went to Gen. Henkle and told him that the statement was an unmitigated lie, but that I did not care anything about it except that he had given his sanction to it by signing his name to the answer containing that aspersion upon my personal and professional character, and that I thought that it was due to me that he should apply to the court for leave to strike that out of the answer, especially in view of the fact, in addition to being false, that it did not seem to have anything to do with the case; but he did not give me to understand that he would do so, nor, so far as I am advised, has he ever done anything to retract the aspersion cast upon me by that statement in the two answers.

Q. It has been stated by Mr. McIntire, in his testimony, that Mr. Helmick well knew Emma Taylor, a person whose name and existence has been called into controversy in this case, and I believe, also, in the case in which you are interested. I will ask you to state whether you ever had any occasion to call upon Mr. Helmick in relation to this person, Emma Taylor, and as to his having acknowledged deeds signed by her; and, if so, what was the result of that interview with him?

Mr. HENKLE: That question and any answer thereto objected to as being purely hearsay evidence, and, of course, incompetent and improper.

A. I knew Justice William Helmick slightly during his lifetime, and at the time I was preparing the bill in the case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, seeking to set aside certain conveyances for fraud, and alleging, among other things, that a person named Emma Taylor, who figured as grantee or grantor or both in some of the conveyances in that bill referred to, was a fictitious person. I went to see Justice Helmick and called his attention to the fact of the conveyances in question, and asked him if he knew Emma Taylor. He told me he did not. I asked him if he knew Emma T. McIntire. He said that he knew

some of Mr. McIntire's sisters by sight, but that he did not know one from another. I asked him if he had ever taken and certified any acknowledgments by Emma Taylor. He stated that he
697 did not know any such woman; that he was in the habit of taking acknowledgments for Edwin A. McIntire; that Mr. McIntire would bring persons, men and women, to his office or send for him to take their acknowledgments; that Mr. McIntire would introduce the persons to him, stating who they were, and that he took their acknowledgments on the faith of that introduction, and that beyond that he had no means of knowing any Emma Taylor.

Q. Did you take to Justice Helmick the deed in that case which was signed by Emma Taylor?

A. I think not. I do not think I had any such deed.

Mr. HENKLE: All this objected to upon the ground that it is purely hearsay and incompetent, and cross-examination is waived.

WM. G. JOHNSON.

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OCTOBER 24, 1893.

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HARRY M. FITZHUGH, who, being recalled as a witness for and on behalf of the complainant, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. You have testified in this case before?

A. Yes, sir.

Q. You may state, however, again your occupation.

A. I am bill clerk in the assessor's office of the District of Columbia.

Q. You are familiar with the records of that office?

A. Yes, sir.

Q. Have you examined the assessment records in the tax office for the purpose of ascertaining what real estate was assessed in the name of Edwin A. McIntire for the years 1881, 1882, 1883?

A. I have.

Q. Will you state the result of that examination?

A. I find the books of the assessor's office of the District of Columbia show that real estate to the amount of thirteen thousand four hundred and forty-one dollars ($13,441) was assessed to Edwin A. McIntire for the year ending June 30, 1881; that real estate to the amount of eighteen thousand eight hundred dollars ($18,800) was assessed to Edwin A. McIntire for the year ending June 30, 1882, and that real estate to the amount of eighteen thousand eight hundred and sixty dollars ($18,860) was assessed to Edwin A. McIntire for the year ending June 30, 1883.

Q. What are these papers which you have in your hand?

A. They are called bond certificates or certificates showing the amount that a person may be assessed for in the tax office.

Q. Signed by whom?
A. By Matthew Trimble, the assessor of the District of Columbia.
Q. And under his official seal?
A. Yes, sir.
698 Q. Did you help to get them up?
A. Yes, sir. I wrote them and Mr. Trimble signed them.

Mr. MACKEY: I here give those certificates in evidence.

NOTE.—And the same are herewith filed in evidence and marked respectively Exhibits A. H. Nos. 22, 23, and 24.

Mr. HENKLE: To the admission of which I object as irrelevant, incompetent, and not in rebuttal, and I also object to the testimony of this witness for the same reason. Cross-examination waived.

HARRY M. FITZHUGH.

Subscribed and sworn to before me this 24th day of October, 1893.

ALBERT HARPER, *Examiner.*

ARTHUR R. COLBURN, being recalled, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. You may state whether or not you examined the files of the Evening Star, the National Republican, and the Washington Post, of this city, for an advertisement of the foreclosure sale of lot five, in square 1002, by Edwin A. McIntire, trustee, during the month of March, 1881.

Mr. HENKLE: What sale was that?
Mr. MACKEY: Sale of the Barbara Brown property.
Mr. HENKLE: Objected to on the ground that it is not rebuttal, but testimony-in-chief.

A. I examined the papers mentioned, beginning with the nineteenth day of March, 1881, and ending with the 1st day of April, 1881, both inclusive, and did not find any such advertisement by Edwin A. McIntire.

Mr. HENKLE: Cross-examination waived.

ARTHUR R. COLBURN.

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(Adjourned.)

NOVEMBER 9, 1893.

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LEONARD SIMMERMACHER, who, being recalled and resworn as a witness for and on behalf of the complainant, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. Where do you now reside?
A. No. 1219 K street northeast, in this city.

699 Q. You have already testified in this case that you are a brother of Barbara Brown, deceased?

A. Yes, sir.

Q. She was the mother of Elizabeth Brown?

A. Yes, sir.

Q. How near did you live to her through her natural life and up to the time she died? Did you live close together?

A. Yes, sir; and we saw one another every day.

Q. Did Barbara Brown have a daughter by the name of Emma Taylor?

A. No, sir.

Q. Did she ever have a daughter by the name of Emma Taylor?

A. No, sir.

Q. Did she have an adopted daughter by that name?

A. No, sir.

Q. Or anybody in her service or a friend by the name of Emma Taylor?

A. No, sir.

Q. In April, 1881, was Barbara Brown in a financial condition to have paid a debt of $500 due upon her property if she had been obliged to pay it?

Mr. HENKLE: Objected to as not in rebuttal and incompetent.

A. Barbara Brown in 1881 could have paid her own debts. She had the means to do so.

Q. If there had been a mortgage of $500 on her property and it was about to be foreclosed, was she in condition to raise the money and pay it?

Mr. HENKLE: Same objection.

A. Well, she could have paid it.

Q. What was her financial condition? Were you in a condition to help her?

Mr. HENKLE: Objected to as incompetent and irrelevant and not in rebuttal.

A. I could have loaned her the means. I had the means to lend her. She was my oldest sister, and I would have helped her out if there had been any trouble; but I knew that she had the means.

Q. What was the disease of which she died?

Mr. HENKLE: Same objection.

A. Consumption.

Q. How long had she been complaining with that disease before her death?

A. Three or four years. The whole family died with it.

Q. How long was she really sick with that disease so that she could not attend to her business?

A. Well, I tell you a person with consumption—you know about that. She would walk out to my house or my mother's house, three or four doors away, and then she could not go out at all.

700 Q. And the disease progressed after she was attacked with it and she gradually got worse, of course, until she died?

Mr. HENKLE: Objected to as leading.

A. Yes, sir.

Cross-examination.

By Mr. HENKLE:

Q. You say that in 1881 your sister had no acquaintance by the name of Emma Taylor?

WITNESS: Had no acquaintance?

Mr. HENKLE: Yes.

WITNESS: No acquaintance?

Mr. HENKLE: Yes.

A. That is something else.

Q. Did you not say that?

A. She had no child by the name of Emma Taylor.

Q. Do you know that she had no friend by the name of Emma Taylor?

A. I do not know this Emma Taylor; she was no child of my sister.

Q. Do you know that your sister, Barbara Brown, did not have any friend by the name of Emma Taylor?

A. No, sir.

Q. You swear that she did not have any friend by that name?

A. No, sir.

Q. How do you know that she did not?

A. I do not know that she did.

Q. Did you know her female friends?

A. Yes, sir; pretty much; she was just a year younger than I was.

Q. You can swear and do swear that she did not have a female friend by the name of Emma Taylor?

A. She did not have any daughter by the name of Emma Taylor.

Q. I am talking about a friend and not about a daughter. Did your sister have a friend by that name?

A. I did not know such a person.

Q. I am asking you whether you can swear that your sister did not have a friend by the name of Emma Taylor.

A. I do not know that she had a friend by the name of Emma Taylor.

Q. You do not know whether she had or not?

A. I do not think she had.

Q. Do you swear that she had not?

A. A friend, that is something else to swear to; she was no relation of hers.

Q. I am not talking about a relation; I am asking you if you know that she did not have any friend by the name of Emma Taylor.

701 A. That is a hard thing for me to swear to; you might have a friend that I did not know and I might have a friend that you did not know.

Q. Do your swear that she did not have a friend by the name of Emma Taylor?

A. I do not swear to that part. I swear that she did not have a child by that name.

Q. Did you not swear that she did not have a friend by that name?

A. No; not a friend, because I did not know her friends.

Q. You do not undertake to say now that your sister did not have a friend by the name of Emma Taylor?

A. If she had I did not know it.

Q. But you do not know whether she had or not?

A. I was with her pretty much every day and if she had a friend by that name I must have known it.

Q. Then you swear that she did not have a friend by that name?

A. No, sir; I do not swear to that, but to my recollection there was no Emma Taylor around there.

Q. Now, you say that in 1881 Barbara Brown was financially able to pay anything that she owed?

A. Yes, sir; in 1881.

Q. Do you know whether your sister, Barbara Brown, in 1881 owned the property known as No. 1216 I street northeast in this city?

A. If you will just give me the number of the lot I will tell you. I owned sublots 39 and 40.

Q. Did she own lot No. 36, in Simmermacher's subdivision, in 1881?

A. Yes, sir.

Q. Was there a house on it?

A. Yes, sir.

Q. Was there a deed of trust on it?

A. None that I know of; it went out of my hands. I was administrator at that time.

Q. You do not know whether she had a deed of trust on it or not?

A. I cannot state that.

Q. Do you know whether there was a deed of trust on it for three or four hundred dollars?

A. I cannot state.

Q. I do not know whether there was or not.

A. When I turned it over to my sister it was clear.

Q. Do you say that your sister did not put a deed of trust on that property for a sum in the neighborhood of four or five hundred dollars?

A. I do not think so.

Q. Well, do you say that she did not?

A. No, sir.

Q. You do not say that she did not?

702 A. No; but I do not think so.

Q. If she did put a deed of trust on it, why did she not pay it?

A. She had the means at that time to pay it.

Q. Do you not know that the property was sold for payment of the deed of trust that she had put on the property?

A. No, sir; it was not sold and she did not put any deed of trust on it.

Q. Well, if she did, will you swear that she did pay it?

A. I will not swear to that, either.

Q. Did she pay you for the property?

A. I turned it over to her; it was my father's property; I was the administrator; I turned it over to her; she inherited it from her father.

Q. Was there a house on it when she got it?

A. No, sir.

Q. There was a house built on it afterwards?

A. Yes, sir.

Q. Where did she get the money to build the house?

A. By the sweat of her brow; she stood in the Center market and we were there together.

Q. What did you do there?

A. We were in the huckstering business.

Q. She followed the huckstering business there with you?

A. Yes, sir.

Q. In 1881?

A. Before 1881.

Q. Did she not take in washing?

A. No, sir; she was not able to take in washing. The other sisters took in washing for her and they did her washing.

Q. Did she ever keep house for you?

A. Yes, sir.

Q. Were there any servants there?

A. Yes, sir.

Q. Did they do the house-work there?

A. Yes, sir.

Q. How long did she live with Mr. Peugh?

A. Well, I do not think she lived there over a year. My father bought the property from Samuel Peugh; some part of it.

Q. When did she go into the huckstering business?

A. I think about 1870; it might have been about 1865, for it was about a year after the war; she was sick when she lived with Samuel Peugh; that was before the war, and this was long after the war.

Q. When did she go into the huckstering business?

A. I think about 1870 or it might have been 1865, for I know it was after the war.

Q. How long was she in it?

A. A year or two before she died. She got consumption and had to stay out of the market-house.

Q. Did she live on Maryland avenue once?

A. Yes, sir.

703 Q. Did she take in washing when she lived there?
A. No, sir.
Q. How much money did she have in 1881?
A. She had more than you and we have got at this minute. She had nearly a keg of gold, I will tell you that.
Q. Where did she keep it?
A. In her house. I was boarding with her then and I was a single man then.
Q. Did she keep it in your house?
A. I lived with her. She and me lived together. That house belonged to her. I lent her $500 to buy that house.
Q. And she had a keg of gold?
A. Well, we saved that. She had plenty of gold.
Q. How much money did she have?
A. I do not know.
Q. Did she have ten thousand dollars?
A. I will not go into the detail.
Q. You say that she had plenty of money, but you will not say how much?
A. No, sir.
Q. Did she have $500 in gold?
A. Yes, sir.
Q. In 1881?
A. You are going back to 1881, now. I am not speaking about 1881.
Q. Well, I am speaking about that.
A. She had in 1880.
Q. Did she in 1881 have $500 in gold?
A. I do not say how much she had at that time.
Q. Do you know how much she had?
A. I know that she had money enough to pay her debts.
Q. Do you know that in 1881 she had $500 in gold?
A. If she had not she would have come to her brother and her brother would have helped her out.
Q. Did she own any property at the corner of 12th and F streets northeast, in this city?
A. Yes, sir; and it was paid for, too.
Q. What became of that property?
A. It was smuggled up between Mr. McIntire and Mr. Kendall.
Q. Did Mr. Kendall have a deed of trust on it?
A. I could not tell you.
Q. Did Mr. Kendall have a sale of the property to pay the deed of trust?

Mr. MACKEY: Objected to as not being responsive to the examination-in-chief.

A. I cannot state that.
Q. You do not know?
A. No, sir.
704 Q. Do you say that Mr. Kendall did not have it sold for the deed of trust upon it?

A. I can go this far and say that he did have a deed of trust upon the property and I paid the notes, and there was a sale afterwards, but I do not know whether or not Mr. Kendall sold it. I paid the notes at the Bank of Washington.

Q. Do you say that Mr. Kendall did not cause that property to be sold under the deed of trust?

A. No, sir.

Q. Do you not know that it was sold by Mr. Kendall under his deed of trust, or will you state how it passed out of her hands?

A. I could not tell you that.

Q. Do you swear that there was not a sale under that deed of trust?

A. I do not swear to that, but I know that I paid a couple of notes for her.

Q. I want you to say whether or not that property was sold under a deed of trust.

A. No, sir; I will not state that.

Q. Then, so far as you know it may have been sold under a deed of trust?

A. Well, it might have been sold.

Q. It might have been sold under a deed of trust?

A. Yes, sir. I was not paying much attention to that part of it; I was paying attention to the I Street property. That was never sold, and I know that straight.

Q. Were you guardian for Catherine Heisman?

WITNESS: For Kate?

Mr. HENKLE: Yes, sir.

A. No, sir; that man there (pointing to the defendant Edwin A. McIntire) was guardian.

Q. Were you not guardian before he was?

A. No, sir.

Q. Were you not security for some one that was guardian?

A. I do not know that I was.

Q. Were you not security for Mr. Heisman, who was guardian?

A. No; no, indeed; I would not go security for his guardianship. I went to the orphans' court——

Q. (Interposing.) How did you go to the court?

A. They wanted me to be the guardian for that child.

Q. At what time?

A. That was the time.

Q. Who wanted you to be guardian?

A. My mother; I was in the market and I stated that I did not have time to attend to it.

Q. Were they not opposed to your being guardian and wanted Mr. McIntire?

A. No, sir; I was opposed to Mr. Heisman, the child's own father, and then the court appointed Mr. McIntire guardian.

705 Redirect examination.

By Mr. MACKEY:

Q. If your sister, Barbara Brown, had a friend by the name of Emma Taylor would you have been likely to have known of it?
A. I certainly think I would have known of it; me and her were the two oldest children and were together in the transaction of business and I ought to have known something about it.
Q. This property at the corner of F and 13th streets northeast, about which Mr. Kendall had something to do, had you or any member of your family ever been able to find out how Barbara Brown lost her title to that property?

Mr. HENKLE: Question and answer objected to as uncertain, incompetent, irrelevant, and not in rebuttal.

Mr. MACKEY (to witness): Do you understand the question?
WITNESS: No, sir; I do not exactly know what you mean.

Q. You said in your direct examination something about that property having gotten into the hands of Mr. McIntire and Mr. Kendall, did you not?
A. It got in that way through Mr. McIntire or Mr. Kendall—something like that; that is the way I understood it.
Q. Do you know how it got into their hands and out of Barbara Brown?
A. I could not tell you.

Recross-examination.

By Mr. HENKLE:

Q. Did Mr. McIntire have anything to do with that property?
A. Indeed I could not tell you; I know that Mr. McIntire was in with that property, and I have seen him around there and often spoke to him before my sister died.

Redirect examination.

By Mr. MACKEY:

Q. You stated that your sister, Barbara Brown, had, in 1880 or 1881, a keg of gold. Did you mean that literally or figuratively?
A. I meant that she had means enough to carry her through. A keg of gold means right smart.

his
LEONARD x SIMMERMACHER.
mark.

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(Adjourned.)

706 *Testimony for Defense in Surrebuttal.*

MARCH 1, 1894.

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Edwin A. McIntire.

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Direct examination.

By Mr. HENKLE:

Q. You testified in this case that you advertised your sales in the morning papers. State whether or not that was what you intended to say.

Mr. MACKEY: I object to that question as being improper and immaterial and because the witness cannot explain on surrebuttal his testimony-in-chief.

A. I think that was a clerical error. I intended to say daily papers. I did say daily papers, I think, but I am reported as saying morning papers.

Q. Where did you advertise your sales at that time, in what papers?

A. I advertised in the various daily papers—the Star, Critic, Republican, the Chronicle, the Nation—I think that is the name of the paper which was published by Mr. Brisban Walker; also in the paper published by Mr. John Lynch at the "Congressional Globe" office; I have forgotten the name of it now; also in the paper published on the west side of 10th, I think, between E and F streets, and in the Post, which was a paper in existence then, I think, and once or twice in a German paper and the paper published by the German society called the Sentinel.

Mr. MACKEY: Same objection to question and answer as being inadmissible and improper in surrebuttal.

Q. Where did Mrs. Brown live, Mr. McIntire, at the time this property was sold?

Mr. MACKEY: Objected to for the same reason.

A. She lived, as was testified to in rebuttal, three blocks away from the property, and she lived there down to the time of her death, some two or three years after the sale, to the best of my knowledge.

Q. Do you know when she died?

Mr. MACKEY: Objected to for the same reason.

A. I could not state the year, but I know that it was two or three years after the sale because after the sale she washed for my family for nearly a year, I guess. She and her sisters took in washing, as Mr. Simmermacher has testified in rebuttal. She was a poor woman——

707 Mr. HENKLE (interposing): I will put a question about that.

Q. Mr. Simmermacher testified that she had a barrel of money, I believe he said, a large amount of gold, and that she was capable of paying all her debts and was independent in her circumstances. What do you say as to that?

A. I know to the contrary. I know that she was a poor woman. I know that she was a servant in the house of Mr. Peugh, as Mr. Peugh has testified, for the better end of a year, if not more, and I know that she did work indicating that she was a poor woman, and I helped her from time to time to get such work.

Q. What do you mean by a "poor woman"?

A. I mean a woman who absolutely needs to work from day to day in order to get her daily bread.

Q. How was it about her ability to pay her debts, debts that she had contracted—such as debts secured by deeds of trust?

A. I know that at one time she did not possess twenty dollars except what I had given her myself.

Mr. MACKEY: All this is objected to for the same reason.

Q. How do you know that that was her condition?

A. I knew the woman quite well. I knew her covering a period of several years. I knew her when she was totally unable to get anything to eat, and I have taken meals to her house for her. I knew her when she was in destitute circumstances, and my wife has taken things to her.

Q. State whether or not Mrs. Brown knew that a sale of her property had taken place; and, if so, what evidence you can offer of it?

A. I knew that she was fully advised of it, first, because she was present at the sale; that she was in hopes something would be realized from the property over and above the indebtedness. She seemed to forget that Mr. Kendall had a second incumbrance upon the property, and she lived within that short distance I had before stated of the property for some two or three years after the sale; she knew that my sister owned it at that time, and that my sister was receiving the rents and had made some repairs there, too.

Q. How do you know that?

A. From having conversed with her and reported to her the fact.

Q. Mr. McIntire, state whether or not she made any complaint to you and, so far as you know, to anybody else about the sale of her property.

A. I never heard her make any complaint whatever in regard to it more than an expression of sorrow that she had lost her property, and she charged it all to her husband, who had unfortunately contracted the drinking habit and gone through with all his property and all hers, too.

Q. Do you know anything about her having a stall in market?

A. I do not; that was before I knew her, if she had such a thing.

Q. Were you well enough acquainted with her and her affairs

708 to know whether she at the time of this sale and subsequently up to the time of her death carried on such a business?

A. I know she did not. I have frequently stopped in the market at Mr. Simmermacher's stand, and I am certain that I would have known if she was engaged in the business at all, and when I called upon him at the market, within the same day or a few days afterwards, I have met her at her house at 13th and F streets northeast, and I am positive that during the time I knew her she was not engaged in the huckstering business.

Q. Who paid the taxes on the Brown property before it was sold?

Mr. MACKEY: Objected to as irresponsive to anything and as improper and inadmissible on surrebuttal.

A. I paid them for Mrs. Brown.

Q. Well, how was it reimbursed to you, if it was?

A. By the rents that I collected for her.

Q. How long did you collect the rents?

A. I am not able to say the date just now, but from the time she first came to me to procure a loan down to the sale of the property.

Q. Who was living in the property at the time it was sold?

Mr. MACKEY: Objected to as improper and inadmissible on surrebuttal.

A. I am not positive now; I am not positive whether it was occupied or not.

Mr. MACKEY: Cross-examination waived.

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(Adjourned to —.)

MARCH 2, 1894.

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George T. Gibbons.

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Direct examination.

By Mr. HENKLE:

Q. Mr. Gibbons, where do you live?

A. No. 453 P street northwest, in this city.

Q. How long have you lived in the city of Washington?

A. About forty-five years.

Q. What is your business?

A. Constable.

Q. How long have you been a constable?

A. About thirty-six years.

Q. I want to know whether or not you were associated in your official capacity with Squire Helmick, late of this city?

A. I was.

Q. How long?

A. During his magisterial career. I do not know exactly
709 how long. I went with him, I believe, when he first got his commission, and I remained with him until his death.

Q. You were his constable?
A. Yes, sir.
Q. Where did you have your office?
A. Right in the office with him.
Q. In the same office with him all the time?
A. Yes, sir; I had no other office.
Q. What opportunities had you for observing his system in doing business as a magistrate?
A. By being there with him, right alongside of him, during his office hours when he was at business. I was there with him the greater part of the day and in the evenings, too, when he would have a good many writs for me to serve; then I would wait until evening, when the office closed up, to serve my writs after the office hours, as I do now with Judge Strider. I was in the office probably two-thirds of the day during office hours.
Q. State what his custom was in taking acknowledgments of deeds where he was not acquainted with the person who proposed to make the acknowledgment.

Mr. MACKEY: I object to that, first, upon the ground that it is generally inadmissible, the custom of an acknowledging officer in the acknowledgment of deeds not validating the acknowledgment unless his custom was in accordance with the statute; secondly, because inadmissible upon surrebuttal, and, thirdly, because the question is not what his custom was in any particular case, but what he actually did in this case.

A. Well, I have been present in cases of that kind before Judge Helmick. I could not pretend to say how many times; but when parties came in there with whom he was not acquainted for the acknowledgment of any legal papers which were to go before any court he would not take the acknowledgment without bringing in some one who was acquainted with the parties and identify them, and then act as a witness to the paper. That was his custom in all his dealings in signing legal papers where a party came in to make acknowledgments with whom he was not acquainted.
Q. Will you say whether or not you knew him to depart from that custom?
A. Not once. He was very particular in that regard; I never saw one more so. In other words, what I can say for him is that he was a gentleman in his business in all capacities.
Q. Will you be kind enough to state whether or not you were familiar with his signature?
A. Yes, sir; I ought to be; I have seen him write it a thousand times, I reckon.
Q. I hand you Exhibit A. H. No. 1 in this case of Brown *vs.* McIntire, being deed from Barbara Brown *et al.* to Martha McIntire, dated April 25, 1881, and ask you to look at the signature
710 "Wm. Helmick" to the acknowledgment of that deed and state whether that is his signature or not.
A. Yes, sir; that is Judge Helmick's signature.
Q. You are quite sure of it?

A. Yes, I am. If he wrote it not five minutes ago, and I had seen him write it, I would not be more sure of it.

Q. I call your attention to the signature "Wm. Helmick" as a witness to this same deed and ask you whether or not that is the genuine signature of Judge Helmick.

A. Yes, sir; that is his genuine signature.

Q. You cannot be mistaken about it?

A. No, sir.

Q. Do you remember when Judge Helmick died?

A. I do not remember the date now. I ought to, but I did not tax my memory with it. I was brought in here to give evidence in some case, but I did not even know what case or what it was about.

Q. What was his condition of health for some time before he died?

A. It was very poor for three or four years before he died.

Mr. MACKEY: I wish now to enter my objections to the questions and answers in relation to the handwriting of Mr. William Helmick as not proper on surrebuttal. If admissible at all, such testimony should have been given in the defendant's case-in-chief.

Cross-examination.

By Mr. MACKEY:

Q. Do you know whether Mr. Helmick knew Mr. Edwin A. McIntire?

A. I do.

Q. Intimately?

A. Yes, sir.

Q. He was well acquainted with him?

A. Yes, sir.

Q. Did he not have Mr. Helmick take a great many acknowledgments for him to deeds?

A. I think so. I do not know whether a great many, but he used to take a number.

Q. Frequently?

A. Frequently.

Q. Did you ever see Mr. Edwin A. McIntire come in there with a lady to acknowledge a deed?

A. I might have been there, but I do not remember positively about that matter.

Q. You have seen Mr. Edwin A. McIntire come in there frequently, however, and acknowledge before Judge Helmick deeds?

A. Yes, sir.

Q. But you do not remember ever seeing him bring anybody in there to acknowledge a deed?

711 A. No, sir; I do not remember any particular lady or gentleman.

Q. You do not remember who the parties were, but do you remember his ever taking anybody there and introducing them to Mr. Helmick?

A. I have known Mr. McIntire to have others in there with him acknowledging deeds.

Q. Did you ever know Mr. Edwin A. McIntire to take any party—any lady—to Mr. Helmick and have that lady sign or acknowledge a deed before Mr. Helmick?

A. No, sir.

Q. So that, whether Mr. Helmick required Mr. McIntire to introduce the lady to him or whether he took Mr. McIntire's word for it, you are unable to say?

A. I am unable to answer that question.

Q. Do you think Mr. Helmick would have taken Mr. McIntire's word or statement as to who the party was making the acknowledgment?

A. Well, I think he would. I think he has done it. Mr. McIntire was a gentleman that Mr. Helmick held very highly as a man of integrity and honesty and an upright gentleman in business. I think he would have taken his word, but that is only a supposition, for I do not know that from anything that Mr. Helmick said.

Q. But you say that from what you knew of the close acquaintance of Mr. Helmick and Mr. McIntire?

A. Yes, sir; and the confidence that Mr. Helmick had in Mr. McIntire.

Q. Do you claim to be an expert in handwriting?

A. No, sir; far from it.

Q. Would it be possible for any person to forge your signature so as to deceive you?

A. I think they might.

Q. Could not somebody forge Mr. Helmick's signature so as to deceive you?

A. Yes, sir; they might do it, but I should take it for Mr. Helmick's signature if it looked like the ones on this paper (Exhibit A. H. No. 1) shown me in this case.

Q. Not being an expert in handwriting, you would not venture to say that you might not be deceived about Mr. Helmick's signature?

A. Not at all.

Redirect examination.

By Mr. HENKLE:

Q. Have you any doubt of that being his signature?

A. I have not the least in the world.

Q. You would not hesitate to act upon it as his genuine signature?

712 Mr. MACKEY: Objected to.

A. Not at all.

Recross.

By Mr. MACKEY:

Q. And yet you might be deceived in it?
A. Yes, sir; as many another poor fellow has been deceived in this world by signatures.

Redirect.

By Mr. HENKLE:

Q. I omitted to ask you, Mr. Gibbons, whether you know Miss Emma T. McIntire.
A. Yes, sir; very well.
Q. Do you know whether or not she was in the office of her brother, Edwin A. McIntire?
A. She was there for a long time.

Mr. MACKEY: Objected to as inadmissible upon surrebuttal.

Q. How near were the offices of Judge Helmick and Mr. Edwin A. McIntire to each other?
A. Just a door or two apart.

Mr. MACKEY: Same objection.

Q. Do you know whether Judge Helmick knew Emma T. McIntire?
A. Yes, sir; he knew her well.

Mr. MACKEY: Same objection.

Q. That you know?
A. Yes, sir; that I do know.

Mr. MACKEY: Same objection.

GEO. T. GIBBONS.

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(Adjourned.)

MARCH 3, 1894.

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EDWIN A. MCINTIRE, who, being recalled, further deposes and says:

Direct examination (resumed).

By Mr. HENKLE:

Q. On page 217 of the record of testimony in this Brown case, Mr. William G. Johnson, a witness for the complainant, says in substance that Mr. Helmick, late justice of the peace, told him that he did not know Emma Taylor; that he was in the habit of taking acknowledgments for Edwin A. McIntire, who would bring
713 men and women to his office or send for him to take their acknowledgments; that Mr. McIntire would introduce the persons to him, stating who they were; that he took their acknowledgments on the faith of that introduction, and that beyond that he

had no means of knowing any Emma Taylor. What do you say with regard to that?

A. I know that Justice Helmick knew Emma Taylor quite well; he stated so in person to my counsel, General Henkle.

Mr. MACKEY: I object to any statement of that sort in evidence, and shall move the court to strike it out.

Q. State whether you heard him say so in my presence or to me, if that is a fact.

A. I will make it that way.

Mr. MACKEY: Objected to as hearsay testimony.

WITNESS: I have seen her in his office and have seen them conversing, and, as to his taking acknowledgments for me upon my introducing a person, I know that Justice Helmick never told him such a thing as that, because Justice Helmick was known to everybody along the neighborhood of his late office as being extremely particular on that point. As testified to by Constable Gibbons, Justice Helmick would never take any acknowledgment of a person unknown to him without the person who introduced the party would sign as witness.

Mr. MACKEY: I object to this answer, and shall move the court to strike it out so far as it undertakes to state the habits of Justice Helmick.

Cross-examination.

By Mr. MACKEY:

Q. Do you say that Emma Taylor was at Justice Helmick's office and that you have seen him converse with her there?

A. I did say that.

Q. When was she there?

A. I have seen her in his office talking to him three or four times.

Q. Who was in the office at the time?

A. That I could not say, because nothing attracted my attention especially but once, when I remember Mr. Pugh being there and Barbara Brown being there, and others in the office, too.

Q. Barbara Brown is dead?

A. Yes, sir; and Justice Helmick is dead, too.

Q. What was Emma Taylor doing at Justice Helmick's office when you saw her there?

A. That I could not say more than I have said—that she was in the office conversing with him.

Q. You do not know what she was there for?

A. I have just said that she was conversing with him.

714 Q. You do not know, however, what the business was that brought her there?

A. I never make a point to inquire, when I go into an office, what people are talking about.

Q. When was it you saw her there?

A. It is impossible to tell you the date.
Q. Can you approximate the date?
A. Some years ago. That is as near as I can get at it.
Q. Was it five years ago?
A. I could not say what time it was. It was some years ago.
Q. That might be three years or fifty years ago?
A. I will not say any further.
Q. You will not undertake to say when you saw her there?
A. It was about the time that I was dealing with her. I cannot come nearer than that.

EDWIN A. McINTIRE.

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(Adjourned.)

MARCH 7, 1894.

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Saul S. Henkle.

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I have very rarely in the course of my experience as a lawyer testified as a witness in a case in which I was counsel.

In these cases, because of the fact that other persons besides Mr. McIntire who knew the facts are dead or not accessible, I feel it my duty to testify as to one or two points. First, with regard to the cards containing the signature of Emma T. McIntire which were offered in evidence in the case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, in the supreme court of the District of Columbia. Those cards were put in evidence by me as counsel for Mr. Edwin A. McIntire or for the defendants in that case during the cross-examination of Mrs. Annie Galliher, a witness for the complainant in that case. She was examined touching her knowledge of the handwriting, especially of the signature, of her aunt, Miss Emma T. McIntire, and I had occasion or we had occasion to believe that she did not know the signature of her aunt; and, desiring to test her knowledge by an arrangement between Mr. McIntire and myself, according to my recollection, we had these several cards or slips of paper with the name "Emma T. McIntire" upon them made, all of which were written by persons other than Emma T. McIntire, as I understood it at the time. I think I did not see the cards written at all, but they were written in pursuance, according to my recollection, of an understanding between us that such cards would be prepared.

Mr. MACKEY: I object then to any statement in regard to these cards if you have no personal knowledge as to who prepared them.

WITNESS: When Mrs. Galliher was on cross-examination
715 these cards were presented to her, and she was asked by me as to whether they were the genuine signatures of Miss Emma T. McIntire or not, and as to some of them she said they looked like her signature, and as to others she said that she did not know whether they were or not. A card was produced to the witness which is marked Exhibit A. H. No. 6 and found at page 103 of

the testimony in that case. That card has been referred to more than once, I think, by the experts in these cases, Messrs. William F. MacLelan and Edwin B. Hay, as containing an exemplar of the signature of Emma T. McIntire, it being assumed that it is her genuine signature, and they have compared other signatures and tested and judged other signatures that were in dispute by this, assuming it to be genuine. Now, I say that I am entirely sure in my own mind that Emma T. McIntire never saw that card (Exhibit A. H. No. 6 in McIntire *vs.* McIntire) until it was afterwards called to her attention when on the stand as a witness in these various cases, but that it was prepared and offered for the purpose of entrapping the witness Mrs. Annie Laura Galliher. That is all I desire to say as to that.

One other point: Mr. William G. Johnson, who was counsel for the complainant in said equity cause No. 10745, of McIntire *vs.* McIntire, has testified in these cases that in a conversation he had with Squire Helmick before his death Mr. Helmick said that he did not know Emma Taylor. With no view of contradicting Mr. Johnson or impeaching his testimony, I want to say this, and I deem it my duty to say it, that the existence of Emma Taylor having been called in question in this suit to which I have just referred, while that case was pending and before this batch of suits was brought, long before, I think, or some time, at all events, upon a certain occasion, I was passing along F street in front of the office of Mr. Edwin A. McIntire and of Justice Helmick, for their offices were very close together, when Mr. McIntire and Justice Helmick were standing in conversation, according to my recollection, on the sidewalk. I came up and entered into conversation with them. Mr. McIntire said, "Now, it has been claimed that Emma Taylor was a ficticious person. I want you, Judge Helmick, to tell Mr. Henkle whether you knew Emma Taylor or not——

Mr. MACKEY (interposing): I object to this as palpably inadmissible.

WITNESS (continuing): Justice Helmick said that he did know her. The precise form of his expression it would be impossible for me to recall, or the precise conversation as to any party who engaged in it I could not recall, but the fact that Mr. McIntire desired Mr. Helmick to tell me whether he knew Emma Taylor to be a veritable person or not I am quite sure of, and that he gave me to understand that he did know such a woman. Whether this is competent or not I am not to say about that, but I feel it my duty to say that because Mr. Johnson has been called to say what he has said.

Mr. MACKEY: Solicitor for the complainant states here that Mr. Johnson was called to give his testimony in relation to what
716 Mr. Helmick had stated to him as to his knowledge of one Emma Taylor for the reason that the inadmissible testimony of Mr. Edwin A. McIntire was thrust into the record by his counsel undertaking to state that Mr. Helmick had admitted before his counsel that there was such a person as Emma Taylor, and for that reason, and for that reason only, was Mr. Johnson's testimony

offered—simply for the purpose of rebutting the effect of such a statement as that, although it was inadmissible.

Cross-examination.

By Mr. MACKEY:

Q. You are unable to say of your own knowledge that this Emma T. McIntire did not see that exhibit (A. H. No. 6 in equity cause No. 10745, in McIntire *vs.* McIntire) before she took the stand to testify about it in these various cases, are you not?

A. As I have said before, I do not think I saw those cards written, but my recollection is that they were prepared in pursuance of an understanding had between myself and Mr. McIntire that signatures would be made in imitation of that of Emma T. McIntire for the purpose of presenting them to Mrs. Annie Laura Galliher with the view of testing her acquaintance with the signature.

Q. Then, for aught you know, they may have been written by Emma T. McIntire, might they not?

A. Well, I say that I did not see her write them. There is a possibility that she might have written them, but I know that was not the purpose.

Q. When Mr. Helmick said that he knew Emma Taylor did he specify any particular Emma Taylor?

A. No; the idea was, Mr. McIntire said, that the existence (I do not pretend to give the phraseology) of Emma Taylor was disputed, and he desired Mr. Helmick now to say to me whether he knew her or not.

Q. And he said he did?

A. And he said he did.

Q. If he had known an Emma Taylor he would have been telling the truth, would he not?

A. Oh, yes, sir.

Q. Although not the particular Emma Taylor referred to in these various cases?

A. My understanding of it was that Mr. Helmick was familiar with the fact that the existence of the Emma Taylor whose name was used in these cases was disputed, and that when he spoke of Emma Taylor he referred to the person whose existence was in controversy in these cases.

Q. That was merely an understanding of yours?

A. Well, yes; that was my understanding. He did not say that, but I assumed that was so.

Mr. MACKEY: I object to the understanding of the witness.

S. S. HENKLE.

717 Subscribed and sworn to before me this 7th day of March, 1894.

ALBERT HARPER, *Examiner.*

NOTE.—The examiner is requested by the solicitors for the respective parties to enter of record the following stipulation as to the evidence in this case:

It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, equity, No. 12761; Brown *vs.* McIntire, equity, No. 12977; Ackerman *vs.* McIntire, equity, No. 12978; Southey *vs.* McIntire, equity, No. 13034, and Hayne *vs.* McIntire, equity, No. 13177, in the supreme court of the District of Columbia, so far as the same may be relevant to the issues raised in this case of Brown *vs.* McIntire (equity, No. 12977), in respect of Emma Taylor, Martha McIntire, or Edwin A. McIntire may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein, subject to all and any objection as to the materiality and competency thereof which could have been made if the same had been taken herein.

* * * * * * *

EXHIBIT A. H. No. 1.

This indenture made this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and eighty-one (1881) by and between Barbara Brown, of the city of Washington in the District of Columbia and Emma Taylor of the same place of the first part, and Martha McIntire of the city of Philadelphia in the State of Pennsylvania of the second part, witnesseth that the said party of the first part for and in consideration of the sum of one hundred dollars, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and does by these presents, grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, her heirs and assigns forever, the following-described real estate situate in the city of Washington, D. C., and known as lot 36 of Leonard Simmermacher's subdivision of original lot five in square one thousand and two (1002) and also all claims for damages by reason of "special improvements," pertaining to said property, and together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said party of the first part, of, in, to, or out of the same piece or parcel of land and premises, subject to a deed of trust recorded in Liber 907, folio 164 *et seq.*

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto the said part- of the sec-
718 ond part, her heirs and assigns, to her and their sole use, benefit and behoof forever, subject to said deed of trust.

And the said Barbara Brown and Emma Taylor each for herself,

her heirs, executors and administrators, doth hereby covenant, promise and agree, to and with the said party of the second part, her heirs and assigns, that she the said party of the first part and her heirs, shall and will warrant and forever defend the said piece or parcel of land and premises and appurtenances, unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof by, from, under, or through her, them, or any of them and against all other persons whomsoever.

And further, that she, the said party of the first part and her heirs shall and will at any and all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make and execute all such other deed or deeds or other assuarance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances, unto the said party of the second part, her heirs or assigns, as the said party of the second part her heirs or assigns, or her counsel learned in the law, shall advise, devise, or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, on the day and year first hereinbefore written.

BARBARA BROWN. [SEAL.]
EMMA TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of us—the name Martha McIntire being first written over an erasure, 6 line, 1st page—

FLOYD HARLESTON.
WM. HELMICK.
SAMUEL A. PEUGH.

DISTRICT OF COLUMBIA, *County of Washington*, } *ss:*

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Barbara Brown and Emma Taylor, parties to a certain deed bearing date on the twenty-fifth day of April, A. D. 1881, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Barbara Brown and Emma Taylor both being unmarried and being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this twenty-eighth day of April, A. D. 1881.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Indorsed: Deed from Barbara Brown *et al.* to Martha McIntire. Received for record on the 7 of April, A. D. 1891, at 2.01
719 o'clock p. m., and recorded in Liber 1578, folio 86 *et seq.*, one of the land records of the District of Columbia, and examined by Geo. F. Schayer, dep. recorder.

EXHIBIT A. H. No. 2.

This indenture, made this sixth day of September, in the year of our Lord one thousand eight hundred and eighty-four (1884) between Emma Taylor of the city of Philadelphia of the first part, and Martha McIntire of the same place of the second part:

Witnesseth: That said party of the first part, for and in consideration of the sum of eighteen hundred dollars in lawful money of the United States to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfoeffed, released and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said *said* party of the second part, her heirs and assigns, forever:

All that certain lot or piece of ground known as lot forty-three (43) in the subdivision of lots in square numbered six hundred and fifteen (615)

Also lot thirty-six (36) in Leonard Simmermacher's subdivision of original lot five in square one thousand and two (1002)

Also lot twenty-one of Bond & Bramhall, trustees subdivision of original lot nine in square numbered nine hundred and ninety-two (992), together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof: and all the estate, right, title, interest and claim, whatsoever, either at law or in equity, of the said party of the first part, of, in and to the said pieces or parcels of land and premises.

To have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their sole use, benefit and behoof, forever.

And the said Emma Taylor for herself and for her heirs, executors and administrators doth hereby covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that she the said part- of the first part and her heirs shall and will warrant and forever defend the said pieces or parcels of ground and premises and appurtenances, unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through them or any of them.

And further that she the said party of the first part and her heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part her heirs or assigns, make, execute, deliver, and acknowledge, all such other deed or deeds, or other assurance in law, for the more certain
720 and effectual conveyance of the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, her heirs or assigns as the said party of the second

part, her heirs or assigns, or her counsel learned in the law shall advise, devise or require.

In testimony whereof, the said party of the first part hath hereunto set her hand and seal on the day and year first hereinbefore written.

EMMA TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of—having first been duly stamped and date altered to 1884—

WM. HELMICK.
H. RICHEY.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Wm. Helmick, a justice of the peace in and for the county aforesaid, do hereby certify that Emma Taylor, party to a certain deed bearing date on the sixth day of September, A. D. 1894, and hereto annexed, personally appeared before me in the county aforesaid, the said Emma Taylor being personally known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this sixth day of September, A. D. 1884.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Indorsed: Deed. Emma Taylor to Martha McIntire. 2.02 p. m. Received for record on the 7 day of April, A. D. 1891, and recorded in Liber No. 1578, folio 88 *et seq.*, one of the records for Washington county, in the District of Columbia, and examined by Geo. F. Schayer, dep. recorder.

EXHIBIT A. H. No. 3.

This indenture, made this eighth day of June in the year of our Lord one thousand eight hundred and eighty (1880), between Barbara Brown of the city of Washington in the District of Columbia, widow, of the first part, and Edwin A. McIntire of the same place, trustee, of the second part:

Whereas, the said Barbara Brown stands justly indebted to R. R. Brouner in the sum of four hundred dollars, money loaned and advanced, had made and delivered her certain promissory note of even date herewith for said sum of four hundred dollars, payable two years after date with interest, until paid at the rate of ten per cent. per annum, payable quarterly, and being desirous to secure the punctual payment of said note when and as the same shall respectively become due and payable, with all interest and costs due and accruing thereon, therefore execute- these presents.

721 Now therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar in lawful money of the

United States, to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released and conveyed, and does by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns, the following-described real estate situate in the city of Washington, D. C. to wit: All that certain lot or piece of ground known and described as lot 36 of Leonard Simmermacher's subdivision of original lot five in square one thousand and two (1002), together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said described real estate and premises.

To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said Barbara Brown her heirs or assigns, to use and occupy the said described premises, and the rents, issues and profits thereof, to take, have, and apply, to and for her and their sole use and benefit until default be made in the payment of said note or any instalment of interest thereon or any proper cost, charge, commission, half commission or expense in and about the same.

And upon the full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Barbara Brown, her heirs or assigns, at her or their cost.

And upon this further trust, that upon default being made in the payment of said note or any instalment of interest thereon, or any proper cost, charge, commission, half commission or expense in and about the same, then and at any time thereafter, to sell the said described real estate and premises, at public auction, upon such terms and conditions and at such time and place and after such previous public advertisement as the said party of the second part his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost, of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation a commission of ten per cent., on the amount of the said sale or sales; secondly,
722 to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder if any, to said Barbara Brown her executors, administrators or assigns.

And the said Barbara Brown doth hereby agree, at her own cost, during all the time, wherein any part of the matter hereby secured

shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due and to keep the improvements insured against fire, in the name and to the satisfaction of said party of the second part, who shall apply whatever may be received therefrom to the payment of the *payment of the* matter hereby secured, whether due or not; and that upon any default or neglect to so pay said taxes and assessments or to so insure, any party secured hereby may pay said taxes and assessments or may have said improvements insured and the expenses thereof shall be a charge hereby secured and bear like interest, as the matter secured. And upon any such failure to pay said taxes and assessments, or to so insure, the said parties of the second part, or his heirs may sell the said described real estate and premises, and apply the proceeds of said sale as hereinbefore directed.

And it is expressly provided, that if said property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half of the commission above provided, to be computed on the amount of the debt hereby secured, and the same is hereby secured.

In testimony whereof the said party of the first part has hereunto set her hand and seal on the day and year first hereinbefore written.

BARBARA BROWN. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, William Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Barbara Brown, party to a certain deed bearin- date on the eighth day of June, A. D. 1880, and hereto annexed, personally appeared before me, in the District aforesaid, the said Barbara Brown being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this twelfth day of June, A. D. 1880.

WM. HELMICK,
Justice of the Peace.

Indorsed: Deed of trust. Barbara Brown to Edwin A. McIntire, trustee. $400 on sublot 36, sq. 1002.

Time, 12 o'clock 30 minutes.
Received for record on the 12 day of June, A. D. 1880, on
723 record in Liber No. 944, folio 75 *et seq.*, one of the land records for the District of Columbia, and examined by—

GEO. A. SHERIDAN, *Recorder.*

EXHIBIT A. H. No. 4.

Barbara Brown.

Note	550 00
Interest	64 34
Cost of sale	33 59
Taxes	64 45
	$712 38

April 1, 1889.

J. E. K.

27 50
11

38 50
6 37

$44 87

Exhibit A. H. No. 5 is a deed of trust dated October 8, 1880, "by and between Samuel A. Peugh, trustee, and Barbara Brown, widow, both of the city of Washington, in the District of Columbia, of the first part, and Edwin A. McIntire, of the same place, trustee, of the second part." Recites: "Whereas the said Barbara Brown stands justly indebted unto William T. Galliher in the full sum of $600 for money loaned and advanced, for which amount she has executed her promissory note, bearing even date with these presents and payable two years after date, with interest until paid at the rate of 10 per cent. per annum, payable quarterly; and being desirous to secure the punctual payment of said note when and as the same shall hereafter become due and payable, with all interest and costs due and accruing thereon, as well as any renewals and extensions thereof," execute these presents. The deed then conveys the east half of lot 15, in square 1007, to said McIntire; also lot 36 of Simmermacher's subdivision of original lots 5 and 10, in square 1002, "together with all," etc. Then follow the usual covenants of a deed of trust to secure an indebtedness. The deed is in the handwriting of the trustee and given 10% commission for sale in case of default. It is acknowledged on the day of its date and recorded October 19, 1880, in Liber 950, folio 386 *et seq.*

EXHIBIT A. H. No. 6.

REAL-ESTATE SALES.—E. A. McIntire, real-estate broker, 918 F street, reports the following, among numerous other, sales this spring: House No. 26 B street northeast to S. T. Turpin, $10,000; lots 63, 64, and 65, square 197, $7,700; lot in — 941 for
724 $4,000; lots 26 and 27, square 419, to J. Snowden, for 50 cents per foot; to B. Brown, 1216 I street northeast, $600; lot 55, square 435, to M. Keleher, 40 cents per foot; to M. J. Butler,

lot on 10th street southeast and on V street southwest, $2,000; to Jas. Cole, lot 4, square 60, and lot 11, square 331, $2,500; to S. McIntire, west half lot 10, square 388, $525. Mr. McIntire, we understand, is building a fine residence for himself opposite the Trinity church and will next week build two elegant houses on 11th street near H, and six or seven on Corcoran and 14th street-.

EXHIBIT A. H. No. 7.

H. B. Moulton & Son, 920 F street N. W.

WASHINGTON, D. C., *Feb. 26th*, 1891.

E. A. McIntire, 222 C St. N. W.

DEAR SIR: Kindly call by my office at your earliest convenience, as I would like to see you in relation to a matter of importance.

Very respectfully, H. B. MOULTON.
W.

Copy of Envelope.

Return to
Hosea B. Moulton, attorney-at-law,
920 F St. N. W., Washington, D. C.,
If not called for in ten days.

(Stamp.)
Washington,
D. C.,
Feb. 26, 7 p. m.

E. A. McINTIRE,
222 C St. N. W.,
City.

Exhibit A. H. No. 8 is an agreement of rental executed by Ernest L. Eselhorst, dated the 21st day of July, 1879, and recites that said Eselhorst "does hereby rent from Edwin A. McIntire, agent, the premises situated 1212 I street, in the city of Washington, D. C., for the period of one month, during and from month to month, at the monthly rent or sum of $8, the first payment to be made the 21st day of July, 1879, and subsequent payments of like sums to be made, in advance, on the 21st day of each and every month during the continuance of said tenancy." Then follow the usual covenants—not to sublet, to pay the bills for gas, and to deliver up the premises in good order, wear and tear excepted. On the back of the deed, besides the usual printed endorsement, are the words "3 days' notice given by Zeveley, H. Z.: moved March 21st, '8–." The figure following the "8" has been obliterated.

EXHIBIT A. H. No. 9.

Office of Edwin A. McIntire, real-estate broker, 918 F street N. W.

WASHINGTON, D. C., *June* 8, '80.

Mr. E. A. McIntire is hereby authorized to procure for me a loan of four hundred dollars on house No. 1216 I St. N. E. (sublot 36, square 1002) for two years, at 10 % interest, payable quarterly.

725 Mr. McIntire to be allowed for bringing down the abstract of Mr. Morsell a sum not exceeding ten dollars and to prepare

necessary papers, which, with commission for negotiation of loan, is not to cost over twenty dollars.

MRS. BROWN.
BARBARA BROWN.

EXHIBITS A. H. No. 10–21.

Exhibits 10–21 consist of 12 checks, dated respectively Washington, D. C., March 6, 1885; Aug. 14, 1885; Sept. 11, 1885; Sept. 24, 1885; Oct. 22, 1885; Nov. 14, 1885; Feb. 15, 1886; March 29, 1886; Jan'y 19, 1886; July 8, 1886; Sept. 16, 1886; Jan. 7, 1886. They are all drawn on Riggs & Co., to the order of Martha McIntire, signed "E. A. McIntire," for the following amounts respectively: $59.50, $136.08, $76.50, $41.30, $69.40, $41.85, $91.00, $57.35, $54.00, $39.75, $67.70, $246.42. All but the last are endorsed, "Martha McIntire, E. A. McIntire." The last is indorsed "Martha McIntire, Central Nat'l b'k, credit ac. of E. A. McIntire."

The 1st, 2nd, and last of said checks are here printed in the record as a sample of all of them.

1st.

No. 1799. WASHINGTON, D. C., *March 6th*, 1885.

Riggs & Co. pay to Martha McIntire or order fifty-nine $\frac{50}{100}$ dollars.

$59.50. E. A. M. $\frac{\text{torn}}{\text{out.}}$ RE.

Indorsed: Martha McIntire, E. A. McIntire.

2nd.

No. 2042. WASHINGTON, D. C., *Aug. 14th*, 1885.

Riggs & Co. pay to Martha McIntire or order one hundred and thirty-six $\frac{8}{100}$ dollars.

$136.08. E. A. McINTIRE.

Indorsed: Martha McIntire, E. A. McIntire.

Last.

No. 2757. WASHINGTON, D. C., *Jan'y 7th*, 1887.

Riggs & Co. pay to Miss Martha McIntire or order two hundred and seventy-six $\frac{42}{100}$ dollars.

$276.42. E. A. Mc $\frac{\text{torn}}{\text{out.}}$ RE.

Indorsed: Martha McIntire. Central Nat'l b'k. Credit ac. of E. A. McIntire.

726 EXHIBIT A. H. No. 22.

Office of the assessor, District of Columbia.

WASHINGTON, *September 26th*, 1893.

This is to certify that real estate to the amount of eighteen thousand eight hundred & sixty dollars is assessed on the books of

this office in the name of Edwin A. McIntire for the year ending June 30, '83.

$18,860.

City.

MATTHEW TRIMBLE, *Assessor.* [SEAL.]

EXHIBIT A. H. No. 23.

Office of the assessor, District of Columbia.

WASHINGTON, *September 26th*, 1893.

This is to certify that real estate to the amount of eighteen thousand eight hundred dollars is assessed on the books of this office in the name of Edwin A. McIntire (for the year ending June 30th, 1882).

$18,800.

City.

MATTHEW TRIMBLE, *Assessor.* [SEAL.]

EXHIBIT A. H. No. 24.

Office of the assessor, District of Columbia.

WASHINGTON, *September 26th*, 1893.

This is to certify that real estate to the amount of thirteen thousand four hundred & forty-one dollars is assessed on the books of this office in the name of Edwin A. McIntire (for the year ending June 30, '81).

$13,441.

City.

MATTHEW TRIMBLE, *Assessor.* [SEAL.]

Memorandum.

1894, December 29.—Opinion of Justice Hagner filed.
See case of Pryor *v.* McIntire, No. 12761, equity.

Memorandum.

1894, December 31.—Motion for rehearing filed.

Memorandum.

1895, January 7.—Petition for rehearing filed.

Memorandum.

1895, January 8.—Rehearing on subject of laches ordered.

727 *Decree Dismissing Bills.*

Filed March 4, 1895.

In the Supreme Court of the District of Columbia.

ELIZABETH BROWN
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 12977.

This cause came on to be heard upon the bill, amended bills, answers, exhibits, testimony, and all other the proceedings, and being submitted to the court after argument by counsel for the respective parties, and after the re-argument of the same, were by the court read and considered.

It is thereupon, this 4th day of March, 1895, by the court and the authority thereof, adjudged, ordered, and decreed that the said bill and amended bills be, and the same are hereby, dismissed with costs, for which execution shall issue as at law.

A. B. HAGNER,
Associate Justice.

From the above decree the complainants take an appeal in open court, which is allowed.

A. B. HAGNER.

March 4, '95.

* * * * * * *

In the Supreme Court of the District of Columbia.

ELIZABETH BROWN
vs.
EDWIN A. MCINTIRE, EMMA TAYLOR, & MARTHA MCINTIRE. } No. 12977. In Equity, 3.

The President of the United States to Edwin A. McIntire & Martha McIntire, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 4th day of March, 1895, wherein Elizabeth Brown is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN R. YOUNG, *Clerk.*

728 Service of the above citation accepted this 8 day of March, 1895.

S. S. HENKLE,
Attorney for Appellees.

* * * * * * *

In the Court of Appeals of the District of Columbia, May 15, 1895.

ELIZABETH BROWN, Appellant,
vs.
E. A. MCINTIRE *et al.*, Appellees. } No. 466.

S. S. Henkle, sol. for appellees:

Take notice that the appellant hereby designates the following portions of the transcript of the record in the above case to be printed as necessary to the hearing of the cause, to wit:

All of the transcript except so much thereof as is included in red-pencil brackets in said transcript.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
WM. W. BOARMAN,
Sols. for App'l't.

(Endorsed:) Court of Appeals, D. C., April term, 1895. No. 466. Elizabeth Brown, appellant, *vs.* Edwin A. McIntire *et al.* Designation by appellant of parts of record to be printed. Court of Appeals, District of Columbia. Filed May 15, 1895. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 466. Eliza Brown, appellant, *vs.* Edwin A. McIntire & Martha McIntire. Court of Appeals, District of Columbia. Filed May 14, 1895. Robert Willett, clerk.

729 In the Court of Appeals of the District of Columbia.

ANNIE M. ACKERMAN, Appellant,
vs.
EDWIN A. MCINTIRE & MARTHA MCINTIRE. } No. 467.

In the Supreme Court of the District of Columbia.

ANNIE M. ACKERMAN, Complainant,
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE, and EMMA TAYLOR, Defendants. } In Equity. No. 12978.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Original bill filed February 7, A. D. 1891.

Original Bill.

Filed February 7, 1891.

In the Supreme Court of the District of Columbia.

ANNIE M. ACKERMAN
vs.
EDWARD A. MCINTIRE and EMMA TAYLOR. } Equity. No. 12978, Doc. 31.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant states as follows:

1. The complainant and defendants, except Emma Taylor, are citizens of the District of Columbia.

2. The complainant sues in her own right. The defendant Edward A. McIntire is sued in his own right and also as trustee under the circumstances hereinafter mentioned.

3. The complainant avers from information and belief that there is not now and never has existed any such person as Emma Taylor described in the deed hereinafter mentioned, and from said information and belief complainant avers that the said name is fictitious and was adopted and used by the said McIntire, under the circumstances hereinafter stated, for the purpose of cloaking and
730 concealing his fraudulent acts as hereinafter set forth. The complainant has, however, inserted said name as one of the defendants in this suit for the purpose of precaution merely, so that if there be in existence any such person she may enter or caused to be entered her appearance herein and make such answer as she may be advised.

4. That some time in the latter part of March, 1882, the complainant, being well seized and possessed of lot twenty-one (21) of Bond and Brumhall's trustees' subdivisions of original lot nine (9) of square nine hundred and ninety-two (992), in the city of Washington, in the District of Columbia, placed the said property in the hands of the defendant McIntire as her agent for the purpose of finding a purchaser for the same for the best possible price; that shortly afterwards said McIntire stated to complainant that he had found a purchaser for the said property for the price of $300, and that that was the best price that could be gotten for it. Complainant was not versed in the ways of business, especially in the transferring of real estate by deed of conveyance, and, having every confidence in the said McIntire as her agent, signed a deed of conveyance, at his request, to an elleged Emma Taylor, although complainant did not know at the time or deem it then important to know who the grantee in the said deed was; that after signing and executing the said deed the said McIntire stated to her that she might call a few days later at his office and he would pay over to her the purchase-money. Complainant accordingly called, when the said McIntire stated to her that after the paying of taxes and expenses

of sale there remained only the sum of seventy-five dollars ($75), which amount he paid her. The said deed to Emma Taylor is dated the 24th day of April, 1882, and is recorded in the land records of this District in Liber 1002, folio 348, and is prayed to be taken as part hereof.

5. Complainant avers that the price obtained by said McIntire was not a fair price for the property, nor all that ought to have been obtained for it at that time had said McIntire acted in the proper discharge of his trust as her agent in finding a purchaser thereof and not violated his said trust by deceiving and defrauding complainant in respect of said alleged sale as hereinafter mentioned.

6. On information and belief only recently obtained complainant avers and charges that the name of Emma Taylor, so inserted in said deed as the grantee thereof, was adopted and inserted therein by said McIntire for the fraudulent purpose of getting the control and possession of said property for himself under the said fictitious name, and that he and not the said Emma Taylor was in reality the purchaser of said property, and that he has ever since appropriated the rents, issues, and profits thereof to his own use.

7. That while complainant is informed and believes and so charges that there is not and never was such a person in existence as the said Emma Taylor, described in said deed, complainant nevertheless avers on information and belief that even if there be any such person she was not the real purchaser of said property and never authorized the said McIntire to purchase the same for her
731 and she paid no consideration for said conveyance; that the deed has never been delivered to her, and that she has never made any claim of title to said property, but that, on the contrary, her name was fraudulently used without her knowledge or consent by said McIntire for the purpose of obtaining the said property for himself, and that he paid from his own means the said $75, paid to complainant as aforesaid, and that he has ever since controlled said property and received to his own use the rents and profits thereof.

8. Complainant therefore complains of the acts of the said McIntire, as stated in the preceding paragraph, as a fraud upon complainant, he being at the time her trusted agent to make sale of the property and to obtain for her the highest possible price therefor, and that he ought not in a court of equity to be allowed to retain the said property as his own, but that he should be held as a trustee of said property for the complainant, and also of all the rents and profits received by him on account thereof since the signing of the deed aforesaid; and complainant is advised that she is entitled to a decree declaring the said deed to Emma Taylor fraudulent and void and directing the same to be delivered up for cancellation.

The premises considered, the complainant prays:

Prayers.

1. That the said defendant, Edward A. McIntire, and Emma Taylor, if there be any such person, may be required to appear and answer the exigency of this bill of complaint.
2. That the said deed to Emma Taylor be declared fraudulent and void, and the defendant McIntire be directed to deliver up the same for cancellation.
3. That an account may be taken of the rents and profits received by said McIntire from said real estate, and that complainant may have a personal decree against him for whatever may be found due.
4. That complainant may have such further and other relief as the nature of the case may require.

ANNIE M. ACKERMAN.

The defendants to this bill of complaint are Edward A. McIntire and Emma Taylor.

FRANKLIN H. MACKEY,
WM. W. BOARMAN,
Solicitors for Complainant.

732 *Answer.*

Filed April 7, 1891. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

ANNIE M. ACKERMAN
vs.
EDWIN A. MCINTIRE and EMMA TAYLOR. } Equity. No. 12978, Doc. 31.

Answer of the defendant Edwin A. McIntire, in the bill by mistake called Edward A. McIntire.

1, 2. I admit the statements in the 1, 2 paragraphs of the bill.
3. I deny the allegations made in the 3d paragraph of the bill.
4. I deny the allegations as made in the 4th paragraph of the bill. I deny that the property was placed in my hands or on my books as agent. Mrs. Ackerman, the complainant, was in 1882, engaged or was about to engage in some litigation. Her attorney's office was next door to mine. She was a Philadelphian and knew that I was one and she called on me to ask if I would buy her property. She wanted to make an immediate sale, as she said she must have money at once in her litigation. I advised her that if she would allow me to place the property on my books and advertise it I could get a little better figure for it, but she insisted upon an immediate sale. She said she would sell the place that day and told me the name of the gentleman who had offered her $300 for it. I said that I was commissioned by a Philadelphia lady, a Miss Taylor, to buy up small properties offered cheap, and after I reported the matter to Miss Taylor the property was agreed to be sold to her

for $300 or $350. It was mentioned to me the same day that there were large unpaid bills for taxes upon the property, and at Mrs. Ackerman's suggestion I called upon her husband, Morris Ackerman, and urged him to pay the taxes or take the property himself. He replied that he could do neither, and said, "She wants to sell at once; she wants immediate cash."

I deny that only $75 was paid to Mrs. Ackerman. I am certain that not less than $175 was paid her. I deny that more than one day was taken in the matter; the whole transaction was done quickly and with the full knowledge of the husband and the attorney of the complainant.

5. I deny that I deceived or defrauded the complainant and that the price paid was not a fair one. The sale was made, as before stated, with the full knowledge of the husband and the attorney of the complainant. It was an immediate sale without advertisement. The house was an old dilapidate- frame of four rooms, with a colored family occupying each room; the lot narrow, twelve feet above grade, in the extreme southeastern part of the city, then almost impassable on account of muddy streets, no improvements, no alley.

733 To make an immediate sale of such property it had to be sold at a cheaper rate than if a more favorable portion of the year was selected when the streets were in better condition and time given to advertise the property.

6. I deny that I inserted any fictitious name in the deed of the property or that I endeavored then or have since endeavored to get the property in my control. I deny that I purchased the property and that I have ever appropriated the rents, issues, and profits to my own use. The said property was conveyed by deed (dated September 6, 1884, and recorded April 7, 1891) from said Emma Taylor to Martha McIntire for valuable consideration, and since the date thereof the said Martha McIntire has received the rents and paid the taxes and expenses of repair, &c.

7, 8. I deny all the allegations as made in the 7th & 8th paragraphs of the bill. I deny that Emma Taylor was not the real purchaser, and that she did not pay the consideration made in the conveyance, and that the deed was not delivered to her, and that she did not make claim to the property, and that her name was used fraudulently or without her knowledge and consent.

I knew Mrs. Ackerman and her husband for several years. I treated her honestly and fairly. I even went out of my way to try to get her husband to take the property or to pay the taxes for her. I have met them both several times each year since the transaction with regard to this property; they have always been quite friendly and never intimated any dissatisfaction with my treatment of them or either of them.

EDWIN A. McINTIRE.

S. S. HENKLE, *Counsel.*

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated

upon my personal knowledge are true and those stated upon information and belief I believe to be true.

EDWIN A. McINTIRE.

Sworn to before me this 7th day of April, 1891.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

Petition to Amend Bill.

Filed April 18, 1891.

In the Supreme Court of the District of Columbia.

ANNIE M. ACKERMAN
vs.
EDWIN A. McINTIRE, MARTHA McINTIRE, and EMMA TAYLOR. } Equity. No. 12978.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Annie M. Ackerman respectfully shows to the court that since the filing of the original bill herein the de-
734 fendant has made answer, and that from said answer it appears that his sister, Martha McIntire, has filed in the office of the recorder of deeds of this District an alleged deed to her of the property described in the bill from an alleged Emma Taylor. Your petitioner alleges said deeds to be fraudulent and therefore prays leave to amend her bill, making the said Martha McIntire a party defendant and making such other amendments as the nature of the case now disclosed may require.

And your petitioner will ever pray, &c.

FRANKLIN H. MACKEY,
WM. W. BOARMAN,
Sols. for Petitioner.

Order Granting Leave, &c.

Filed April 18, 1891.

* * * * * * *

On petition of the plaintiff, by her solicitors, Messrs. Franklin H. Mackey and Wm. W. Boarman, for leave to amend the bill, it is this 18th day of April, 1890, ordered that the plaintiff have leave as prayed.

A. B. HAGNER.

Amended Bill.

Filed April 18, 1891.

In the Supreme Court of the District of Columbia.

ANNIE M. ACKERMAN
vs.
EDWIN A. McINTIRE, MARTHA McINTIRE, and EMMA TAYLOR. } Equity. No. 12978.

The complainant hereby, by leave of court first had and obtained, amends her original bill of complaint as follows:

1. By correcting the error in the first name of the defendant E. A. McIntire, called in said bill "Edward" instead of "Edwin."

2. By adding as a defendant to said bill Martha McIntire.

3. By striking out all of said bill after the 7th paragraph thereof and inserting the following:

8. That on the 7th day of April, 1891, the day of the filing of the answer of the defendant E. A. McIntire to the original bill in this cause, there was filed for record in the office of the recorder of deeds for the District of Columbia an alleged deed from the said alleged Emma Taylor to the defendant Martha McIntire, who is a sister of the defendant E. A. McIntire, the said alleged deed being dated the 6th day of September, 1884; that the defendant Martha McIntire claims the fee-simple title to said property under and by virtue of said alleged deed; that complainant did not know of the existence of said alleged deed until the filing of the answer of said
735 E. A. McIntire to the original bill herein, and therefore did not make the said Martha a party to said original bill.

9. Complainant states, however, that the said alleged deed is a nullity on its face, designating no property by any sufficient description, and therefore could not, if for no other reason, pass to said Martha McIntire a title to complainant's property; but complainant avers that said alleged deed, even if not void for the reason just stated, is wholly and utterly void on the ground of fraud, it being a fraudulent and forged instrument, written by or at the instigation of the defendant E. A. McIntire for the purpose, as complainant is informed and believes and so charges, of apparently placing the title to said property in the said Martha McIntire, while the said E. A. McIntire should continue to enjoy the beneficial use of said property and receive the rents, issues, and profits thereof.

10. Complainant further states on information and belief that the said Martha McIntire paid no consideration for the execution of said alleged deed, and that the consideration of $1,800.00 therein alleged to have been paid is a false and fraudulent recital, and that she had, if not actual, at least full constructive knowledge and notice of the aforesaid fraud in the alleged execution of said alleged deed and would not be a *bona fide* purchaser without notice, even if the alleged Emma Taylor was not a fictitious person, and she, the

said Martha, had paid to her brother the consideration mentioned in said alleged deed.

11. Complainant therefore avers that she is entitled in a court of equity to have the said alleged deed to said Emma Taylor of the 24th of April, 1882, and the said alleged deed to Martha McIntire of September 6th, 1884, declared fraudulent and void and to be reinstated in her title to said property, and that she is further entitled to an account from the said E. A. and Martha McIntire of the rents, issues, and profits of the said property received by them or either of them since the 24th day of April, 1882.

Wherefore complainant prays—

1. That the defendants be required to answer this amended bill, but without oath, the complainant hereby expressly waiving such oaths, and particularly that the defendant- E. A. McIntire and Martha McIntire make full, true, and explicit answers to the following interrogatories, but without oath, the complainant hereby expressly waiving such oath:

Int. 1. Who is the Emma Taylor described in the deeds of April 24th, 1882, and September 6th, 1884?

Int. 2. Was she ever in the District of Columbia at any time, to the knowledge of either of you? And, if so, give the dates of such times and state how long she remained here, to the knowledge of either of you.

Int. 3. At what house or hotel did she live while here? Give street and number.

Int. 4. Where was her residence in Philadelphia, if she
736 ever resided there? Give street and number and date of her residence there.

Int. 5. Where is she now and when was the last time you ever heard of her, and from whom?

Int. 6. Do you or either of you know of any person in this city or the city of Philadelphia, outside of your immediate family, who ever knew her or ever conversed with her or ever saw her to know her? If so, give their names and addresses.

Int. 7. Have you or either of you any letters written by her or signed by her; if so, will you file with the answer to this amended bill any of such letters, with the postmarked envelopes, as evidence of what you claim to be her handwriting?

Int. 8. Did you or either of you ever remit to her or pay directly to her any money, by check or otherwise; and, if so, will you please produce and file with your answers her or any of her receipts therefor, or the check or checks, with her indorsement thereon, so that the same may be taken as evidence of what you claim to be her handwriting?

Int. 9. How did you, Martha McIntire, pay to said Emma Taylor the $1,800 mentioned in the deed, on September 6th, 1884? Was it by check or in cash; and if by check, upon what bank was said check drawn? If it was not paid directly by you to Emma Taylor, through whom was it paid and in what manner?

Int. 10. Have each of you, as far as you can, answered fully and in detail the foregoing interrogatories?

Int. 11. Are there any other facts which you or either of you have within your knowledge, information, or belief which will tend to disprove the charge made in the bill that the said Emma Taylor is a myth and a fiction? If so, state fully and in detail what said facts are.

The said defendant-, Edwin A. McIntire and Martha McIntire, will answer separately each of said interrogatories as far as it is their power so to do.

2. That the said alleged deed of April 24th, 1882, from complainant to said Emma Taylor and the alleged deed from said Emma Taylor to Martha McIntire, bearing date September 6th, 1884, be declared fraudulent, null, and void.

3. That an account may be taken of what is due from the defendants E. A. McIntire and Martha McIntire to complainant for the rents and profits received by them or either of them of said described property since the 24th day of April, 1882.

4. That complainant may have such further and other relief as to the court may seem just and proper.

FRANKLIN H. MACKEY,
WM. W. BOARMAN,
Sol's for Compl't.

The defendants to this bill of complaint are E. A. McIntire, Martha McIntire, and said alleged Emma Taylor.

737 *Answer to Amended Bill. Filed June* 2, 1890.

In the Supreme Court of the District of Columbia.

ANNIE M. ACKERMAN
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE, and EMMA TAYLOR. } Equity. No. 12978.

Joint answer of Edwin A. McIntire and Martha McIntire to the amended bill in the above-entitled cause.

1, 2. We admit the statements in the 1st & 2nd paragraphs of the bill.

3. We deny the allegations made in the 3rd paragraph of the bill.

4. We deny all the allegations as made in the 4th paragraph of the bill. Defendant E. A. McIntire denies that the property was placed in his hands as agent for the purpose of finding a purchaser, or that it was placed on his books for that purpose, and that he reported he had found a purchaser, and that $300 was the best price that could be gotten for it. He denies that the complainant was not versed in business, and also denies the other allegations. He says that Mrs. Ackerman, the complainant, was in 1882 engaged or about to engage in some litigation. Her attorney's office was next door to McIntire's real-estate office, and she called, at the suggestion

of her attorney, to ask if he (McIntire) would buy her property. She wanted to make an immediate sale, as she said she must have ready money to assist her in her litigation. Defendant E. A. McIntire advised her that if she would allow him to place the property on his books and advertise it he could get a better figure for her, but she declined the proposition and insisted upon an immediate sale. She said she would sell the place that day, and named two gentlemen in the southeastern part of the city with whom she had spoken about it, one of whom offered her $300, and the other declined to pay that much for it. Defendant E. A. McIntire told her that he was commissioned by a Miss Taylor to buy up small properties offered cheap, and subsequently the property was agreed to be sold to Miss Taylor for $300 or $350. Later, on the same day, it was discovered there were large unpaid bills for taxes upon the property, and at Mrs. Ackerman's suggestion defendant E. A. McIntire called upon her husband, Mr. Ackerman, and urged him to pay the taxes or take the property himself. He replied that he could do neither, and said substantially, "She wants to sell at once. She wants immediate cash. She is going to sell today. She has offered it to Fred. Bloomer for $200. Let her sell it." Defendant E. A. McIntire denies that only $75 was paid to complainant. He is certain that she was paid all except the amount of taxes in arrears. At least $175 was paid her in cash, and not more than a day was taken in the matter, for the complainant wanted ready money. The whole transaction was done quickly and with
738 the full knowledge of the husband and the attorney of the complainant.

5. We deny the allegations in the 5th paragraph. Defendant E. A. McIntire says the sale was made as aforesaid with the full knowledge of the husband and the attorney of the complainant. It was an immediate sale, without advertisement. The house was an old, dilapidated frame of four rooms, with a colored family occupying each room, the lot narrow, 12 feet above grade, in the extreme southeastern part of the city, the location then almost impassable on account of muddy streets; no improvements; no alley on the rear, and the sale was at a season when it was difficult to make sales, especially in that locality.

6, 7. We deny all the allegations in the 6th and 7th paragraphs of the bill. The sale was made in good faith to Emma Taylor, the consideration paid by her, and the deed duly delivered to her, and she, in like good faith, conveyed the property to defendant Martha McIntire, who has since then been paying all the taxes, keeping the property in repair, and receiving all the rents.

8. We admit that the deed of September 6, 1884, was recorded on April 7, 1891, and that the delay in recording it was pure carelessness and forgetfulness on the part of defendant Martha McIntire, who was under the impression that the recording of deeds was solely to protect the grantee in the event of the loss of the deed, and, as she had the deed in a vault, she felt perfectly safe. If, however, the complainant or the solicitors who filed the bill had been at all desirous to ascertain who was the owner, they could very easily have

obtained the information by merely making inquiry of either of these defendants or of their solicitor or of the tenants on the premises.

9. We deny the allegations in paragraph 9. We deny that said deed above referred to is fraudulent or forged, and that the bill was only apparently placed in the name of Martha McIntire, while defendant E. A. McIntire could receive the rents, &c., as alleged. We aver that the said deed was in good faith executed, acknowledged, and recorded in the District of Columbia and, as we are advised, in accordance with the laws thereof. The property is described in said deed as "lot twenty-one of Bond and Bramhall, trustees, subdivision of original lot nine, in square nine hundred and ninety-two (992)," and the said Martha McIntire has since the date of said deed paid the taxes and kept the property in repair and received the rents thereof.

10, 11. We deny the allegations made in paragraphs 10 and 11. The defendant Martha McIntire paid for the property, in good faith, the consideration mentioned in the deed. She had no knowledge then of any fraud, and she and her codefendant, E. A. McIntire, deny that there was any fraud or false or fraudulent recitals, and aver that in all their transactions they have acted in truthfulness and honesty, and they deny that the complainant has any right to call upon them or either of them for any account.

739 *Answers to Interrogatories.*

These defendants, denying the right of the complainant to propound the interrogatories in the amended bill, and not waiving their right to object thereto, answer as follows:

1. Emma Taylor was a lady whom Martha McIntire met some 3 or 4 times at the office of E. A. McIntire, 918 F street, Wash., D. C., and once in Phila. E. A. McIntire says he first met her about 10 or 12 years ago, when she was introduced by a Mr. Cathcart Taylor, of Philadelphia, who had himself been introduced by Mr. Fred. W. Jones, of this city, and both Cathcart Taylor and Emma Taylor were believed to be related to a Mr. Taylor who at one time had a flour mill, or controlled one, in Georgetown, D. C.

2. Both these defendants know that Emma Taylor was in Washington from time to time between about 1880 and 1885, but they cannot give dates nor can they say how long she remained.

3. Both these defendants believe that Emma Taylor boarded for a while at "Evans'," on the south side of F street between 9th & 10th N. W., and for a while at "The Le Droit," on F street between 8th & 9th streets.

4. She claimed to be a Philadelphian and had evidently lived there, for she knew the streets and different localities. E. A. McIntire says he wrote to her about 10 years ago at a house on Sumner street near 17th street, but he cannot at this late day recall the number of the house.

5. We do not positively know her present address. When we last heard of her it was that she had married and gone west to

Pittsburg or Chicago. E. A. McIntire says that several years ago he wrote to Miss Taylor at the suggestion of Mr. Fred. Jones, who knew her, addressing her by her maiden name, at Pittsburg and again at Chicago, but the letter was returned from Pittsburg uncalled for. The one sent to Chicago was never heard from. Subsequently Mr. Jones offered to procure the proper address, but sickness prevented him.

A few years ago a Mr. John Taylor, an employee in one of the departments of this city, advised E. A. McIntire that Miss Emma Taylor had been then recently married and was living at Pittsburg or Chicago.

6. Mr. Cathcart Taylor introduced Emma Taylor to E. A. McIntire. His residence in Philada. is not remembered, but E. A. McIntire says that he met him several years ago on Chestnut St., Philada., and was then presented by him with a printed copy of an address delivered by him (Taylor) before the alumni of the Philada. Central high school, and from the fact of his delivering such an address presumes that he must have lived in Philada. all his earlier days. Miss Emma Taylor was also known to W. H. Helmick, J. T. Coldwell, Fred. W. Jones, and Elmer E. Atkinson, of Wash'n, D. C. Messrs. Helmick, Coldwell, and Jones are now deceased. Mr. Atkinson's address is not remembered, but he is a claim agent practicing before the Pension Office. Deeds
740 signed by Emma Taylor have been witnessed in Washington by H. Richey, Floyd Harleston, and S. A. Peugh, as well as by the officer taking the acknowledgment. Ten of our relatives have conversed with her.

7. Martha McIntire says she never received any letters from Emma Taylor. E. A. McIntire says he has received several notes from her, but never any extensive correspondence. The notes, however, had nothing whatever to do with the suit or the property involved. They were of a confidential nature, and he should have to decline to file them if they were now in his hands.

8. We have had money transactions with her. We have forgotten if checks were used in payment or part payment, but the deeds we believe to be the only receipts obtained, and several of them are filed in this court. E. A. McIntire at one time, about 10 years ago, assisted her in collection of a draft or check at the Central Nat'l bank, in which bank or in one of the downtown banks she afterwards had an account.

9. Martha McIntire says she may have paid in check or in cash or part both. She cannot now remember. She is not positive if she paid direct to Emma Taylor or left the money with E. A. McIntire to pay her, but is under the impression that it was paid direct to Miss Taylor at E. A. McIntire's office.

10. Yes; we have endeavored to answer fully.

11. Yes. E. A. McIntire expects at the proper time to produce witnesses who will testify as to their knowledge of Emma Taylor. One of the witnesses for the complainant, introduced in another cause recently instituted by the same solicitors who filed this bill, truthfully acknowledged that he had met Miss Emma Taylor. (See

testimony of Mr. Forrest in the Mary C. Pryor cause, # 12761, equity.) Further, we answer that we are informed and believe and so charge in regard to this suit and the several suits recently filed by the same solicitors (to wit, equity cause- No. 12761, 12977, 12979, 13034, 13035, and 13177) that not one of said suits were instituted at the instance of the complainants themselves, but that the solicitors who file this bill and other bills named have acted in connection with or at the suggestion of the solicitor who filed a bill of similar nature (equity, # 10745), and who we believe to be actuated solely with a desire to damage the reputation of these defendants and prejudice the courts against them in their defence of the matters involved in the settlement of the estate of David McIntire, dec'd, which has for seven years been litigated by said solicitor in the courts of this District, notwithstanding that the opinions of the courts have been uniformly rendered in favor of these defendants and against the clients of said solicitor; that when said equity cause No. 10745 was filed it was charged, as in this bill, that Emma Taylor was a myth, although the complainant in that bill knew well to the contrary. The answer of E. A. McIntire indicated that, among other persons, Mr. Wm. Helmick, a justice of the peace, would know that the charge in said equity cause No. 10745 was false, and about that time (now nearly 4 years ago) the said Justice Helmick stated in the presence of S. S. Henkle (who was then, as now, the at-
741 torney of E. A. McIntire) that he, Helmick, remembered Emma Taylor, and that he had taken her acknowledgments to several deeds, and that he would not have done so if he had not known her; and about the same time Mr. Fred. W. Jones, then a member of this bar, also stated that he knew the said Emma Taylor and had given E. A. McIntire an address in Philadelphia that he thought would reach her.

If the testimony in said cause # 10745 had been filed in the usual way, so that cause could have proceeded to trial within any reasonable time after the date of the last session before the examiner, now about 3½ years ago (and the testimony is not yet filed), the testimony of both Justice Helmick and Mr. Fred. W. Jones would have been secured some months before their sudden deaths and would, we believe, have conclusively disposed of the allegation that Emma Taylor was a myth.

And, further answering the complainant's bill and the amendments thereto, these defendants say that they are informed and believe and so charge that this suit was instituted at the instance of the solicitors themselves and not at the solicitation of the complainant.

EDWIN A. McINTIRE.
MARTHA McINTIRE.

S. S. HENKLE,
Counsel for Def'ts.

We do solemnly swear that we have read the answer by us subscribed and the answer to the interrogatories and know the contents thereof, and that the facts therein stated upon our personal knowl-

edge are true and those stated upon information and belief we believe to be true.

EDWIN A. McINTIRE.
MARTHA McINTIRE.

Subscribed and sworn to before me this 1st of June, 1891.
R. J. MEIGS, *Cl'k*,
By L. P. WILLIAMS, *Ass't Cl'k*.

Replication.

Filed June 12, 1891.

* * * * * * *

The plaintiff hereby joins issue on the answers of the defendants to the amended bill and will hear the cause on bill, answer, and testimony.

FRANKLIN H. MACKEY,
WM. W. BOARMAN,
Sol's for Pl'tff.

* * * * * * *

JULY 27, 1891—Monday, 12 o'clock m.

Met pursuant to agreement.

Present: S. S. Henkle, Esq., solicitor for the defendant Edwin A. McIntire, who is present; also the examiner, and Messrs. F. H. Mackey and W. W. Boarman, solicitors for the complainant.

742 ANNIE ACKERMAN, who, being produced as a witness of lawful age for and on her own behalf and being first duly sworn, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. You are the complainant in this case?
A. Yes, sir.
Q. You were at one time owner of lot 9 or sublot 21, in square 992?
A. Yes, sir.
Q. Where is that property located?
A. On 11th street between B street and Pennsylvania avenue southeast, in this city; No. 408 11th street southeast.
Q. Did you ever have that property for sale?
A. Yes, sir.
Q. Did you offer it for sale through anybody?
A. Yes, sir; I left it with Mr. Edwin A. McIntire.
Q. You may state in your own way just how you came to leave that property in Mr. McIntire's hands for sale.
A. A friend of mine told me to leave it there; I have not much to say, only that I left it there.
Q. Well, did you have any conversation with Mr. McIntire at that time?

A. He was to sell it for $500.
Q. You told him to sell it for that?
A. Yes, sir.
Q. What did he say to you?
A. I just left it on sale for $500.
Q. Did he put it on his books?
A. Indeed I do not know what he did.
Q. What was the next thing that happened?
A. Well, I went to the navy yard to see Mr. Wood, and Mr. Wood told me to see Mr. Bieber and take him up to the house and he would buy it for $500, and Mr. McIntire told me it was sold.
Q. How long after your first interview with Mr. McIntire was it that you took Mr. Bieber up there?
A. A short time.
Q. A week or ten days?
A. I guess, then, it was a month; I guess it was a short time, so short that I did not think it was sold.
Q. Mr. McIntire told you it was sold?
A. Yes, sir.
Q. Did he tell you anything else at that time or did you say anything to him about it?
A. No, sir.
Q. You had some conversation about it?
A. We might have had. He said it was sold and to come down in a few days and get the money.
Q. Did you sign any paper at that time?
743 A. No, sir.
Q. When did you go back to Mr. McIntire?
A. I do not remember the date, but it was a very short time; it might have been that week.
Q. When you went there what was done?
A. I got my money.
Q. How much money did you get?
A. Seventy-five dollars.
Q. Did you sign the deed then?
A. No, sir; I did not sign anything.
Q. Do you remember when you signed the deed?
A. I signed my name to something. I do not know what it was. I was in great trouble and I wanted the money. I thought the man would do right by me. I did not look at anything.
Q. Did he give any explanation as to how it was so small?
A. That was all that was left, or something of the kind.
Q. Did he say what the purchase-money had been used for?
A. I knew the house was all right. Mr. Ackerman always kept everything paid up.
Q. What I want to get at is whether, when he paid you the $75, you expressed at that time any satisfaction or dissatisfaction as to the amount.
A. I said it was very little money for a house, much less for a lot.
Q. How did he explain it?

A. He explained the way they generally do.
Q. Well, how?
A. You men have a way of talking that is hard for me to remember.
Q. Did he tell you what he sold it for?
A. I think he said $300.
Q. Did he tell you to whom he sold it?
A. Yes, sir; a woman, but I did not see the woman, and I was looking around for her.
Q. Did you ever see Emma Taylor?
A. No, sir; I thought when I sold anything I had to have some one there to sign something. That is my idea of selling anything.
Q. Have you ever seen Emma Taylor from that day to this?
A. No, sir; I heard of her, but I never saw her.
Q. You allege in your bill that Emma Taylor is a fictitious person; that she never existed, and that you allege on information and belief. How did you first come to find that out?
A. Why, I was sent for.
Q. Who sent for you?
A. Mr. Mackey.
Q. I sent for you?
A. Yes, sir.
Q. How were you sent for, by letter, or how?
A. By letter.
Q. Where were you employed at that time?
744 A. In the Government Printing Office.
Q. Well, you got a letter from me?
A. Yes, sir.
Q. You may state what you did in pursuance of that letter.
A. I came right away here. I said that will certainly be good for me some day.
Q. And having come here, then, afterwards you brought this suit?
A. Yes, sir.

(Adjourned.)

SEPTEMBER 29, 1891.

* * * * * * *

ANNIE ACKERMAN, who further deposes and says, being recalled for cross-examination:

By Mr. HENKLE:

Q. You owned a piece of property which you put into the hands of Mr. Edwin A. McIntire for sale?
A. I did.
Q. Where was that property located?
A. No. 408 11th street southeast.
Q. When was it that you offered it for sale?
A. In the spring of 1882.
Q. What kind of property was it?

A. A small frame house with, I think, five rooms, being a two-story house, and it was in good condition, as I lived in it myself.

Q. How large was the lot?

A. I guess that — in the deed, whoever has the deed.

Q. Do you remember?

A. I cannot remember all that.

Q. How wide was the house?

A. One room wide, front room, double parlor. I know there was plenty of room in it for me, with a side alley.

Q. You did not live in the house at the time?

A. No, sir; not at that time; I had just left it.

Q. Why did you want to sell the house?

A. Well, I do not suppose I would have sold it only the agent informed me that it was defective and somebody was coming there after money, something wrong about it, and I thought it was a great trouble.

Q. Did you need the money at that time?

A. Not exactly. I was getting something every month. I wanted to get rid of the house because I heard there was something the matter with it.

Q. Did you tell Mr. McIntire that you were in trouble and needed the money?

A. I wanted the money for the house rather than be troubled with it.

745 Q. Did you tell him that you were in trouble and wanted the money?

A. I was not in great need of it. I wanted as much as I could get for the house.

Q. How came you to fix the price at five hundred dollars?

A. Because I would be satisfied with that. The tenant would have bought it for six hundred dollars.

Q. When did you find that out?

A. Afterwards.

Q. How long afterwards?

A. Quite a while.

Q. How long?

A. Because I never went in that neighborhood for years.

Q. Was it years afterwards?

A. Yes, sir.

Q. How many years?

A. I could not say exactly.

Q. It was several years afterwards, was it?

A. Yes, sir.

Mr. MACKEY: Who was the tenant?

WITNESS: Mr. Holmes.

Q. What business was Mr. Holmes in at that time?

A. Wood and coal business.

Q. Did he drive a wood and coal wagon?

A. Yes, sir; he was an honest man and paid the rent right along, and he would have paid for it in time.

Q. Did he have any money or property except his business?

A. Not that I know of. I never inquired into those particulars.

Q. When you said that he was in the coal and wood business you meant that he drove a wood and coal wagon?

A. Yes, sir.

Q. Did you offer that property to Mr. Beiber?

A. I did.

Q. Did you offer it to him for $300?

A. No, sir; I always asked $500 for it.

Q. Did you mention to him that you were willing to take $300?

A. No, sir; I never heard of the sum of $300.

Q. Did you tell Mr. McIntire that Mr. Bieber had offered you $300?

A. No, sir.

Q. What did you say to him about Bieber?

A. I said he came up to buy the house. He went up with me to the place. I said to Mr. McIntire, "Here is a gentleman to buy the house," and Mr. McIntire said, "You have sold the house."

Q. You told Mr. McIntire that Mr. Bieber wanted to buy the house?

A. Yes, sir.

Q. And thereupon he said that he had sold it?

A. That I had sold it.

Q. He meant that you had sold it through him?

A. Yes, sir.

746 Q. How much money did you say you got?

A. Seventy-five dollars.

Q. Was that all?

A. That is all. There was a great deal to pay, so he said—a great deal to pay on the property.

Q. Your first initials are A. M.?

A. Yes, sir.

Q. Did Mr. McIntire give you a check for the money?

A. No, indeed; he just handed me out $75, and I got out quick with it.

Q. Did you not put your name on a check?

A. No, sir.

Q. You know your signature when you see it?

A. Sometimes I do.

Q. Will you look at that check and say whether that is your signature on the back of it?

A. That "A" is so far away from the "M." I know that he handed me the money.

Q. I am asking you whether that is your signature.

A. It looks like it.

Q. Well, is it your signature?

A. I could not say.

Q. Is it not your signature?

Mr. MACKEY: I object, as the witness has said that it looks like her signature, but she could not say.

A. I do not make a space between that "A" and "M." I do not

know; I could not say; it is my name, but I do not know whether I wrote it or not. I sign pay-rolls every month and I never make that kind of an "A."

Q. You say that is not your signature?

A. I will not say; I do not like to say. You asked me about the money; it was handed to me.

Q. You say that he gave you money?

A. Yes, sir.

Q. And that was $75?

A. Yes, sir.

Q. Was it in bills?

A. Yes, sir.

Q. Did he show you an account?

A. I never saw any writing at all.

Q. He did not exhibit to you an account?

A. No, sir.

Q. He did not exhibit to you any written statement showing what application he had made of the rest of the money?

A. I asked him where the rest was, and he said that he had used it.

Q. He did not show you any statement showing where it went or how?

A. No, sir.

Q. He just stated that he used it. Was that all?

747 A. Yes, sir.

Q. Did he tell you how he had used it?

A. No, sir.

Q. What was the character of the money?

A. It was in bills; of course, I do not remember the denominations.

Q. Did he tell you that there were tax bills and other expenses?

A. O, yes; I do not know what else there was.

Q. He must have accounted to you in some way. What did he tell you there was?

A. That was all that was left.

Q. Did he not tell you what was done with the rest of the money?

A. I know that there were no improvements on the house.

Q. What did he say to you as to where the rest of the money had gone?

A. He said that he had paid it on the house. I do not know any more.

Q. Were you a party to the equity suit No. 8729, supreme court of this District, of Ackerman *vs.* Ackerman?

A. Yes, sir.

Q. Did you testify in that case that you had received one hundred and seventy-five dollars from the proceeds of that property?

A. I do not remember.

Q. You filed a cross-bill in that case against your husband?

A. I did.

Q. Did you not say in your cross-bill this: "She did (meaning yourself) upon the advice of said Bundy (referring to C. S. Bundy,

justice of the peace), convey said houses to him (your husband), receiving as consideration therefor the sum of $500 and a little piece of property on 11th street, for which, after settling encumbrances, she (meaning yourself) received $175"?

A. No, sir; that had nothing to do with that property. That 11th Street property had nothing to do with that other property.

Q. I am asking whether you did not say that in your cross-bill?

A. That is the first I ever knew of it.

Q. Well, if you did so say, was it true?

A. No, sir; I did not say it, because that property had nothing to do with this piece.

Q. Which property?

A. The two houses.

Q. What little piece of property did you have on 11th street southeast except this?

A. That is the only one there. I was speaking of other property.

Q. I asked you whether you did say in your cross-bill against your husband that upon the advice of C. S. Bundy, justice of the peace, you conveyed houses to M. A. Ackerman and received as a consideration the sum of $500 and a little piece of property
748 on 11th street southeast, for which, after settling encumbrances, you had left $175?

A. No, sir; I do not remember anything like that.

Q. You say that you did not say that in your cross-bill filed in that case in equity No. 8729?

A. I cannot remember it.

Q. Well, if you did say it, was it true or not?

Mr. MACKEY: I object to any such hypothetical questions being put to the witness.

A. I did not know anything about what it would bring me or leave me.

Q. You have sworn here today and the other day that Mr. McIntire gave you but $75 out of the proceeds of that house.

A. That is what I told every one.

Q. In that cross-bill you said that you had left, after paying encumbrances, $175. Now, I want you to explain that.

A. I cannot explain it.

Q. Which of them was true—what you say now or what you said then?

A. I have asked all my friends and they said that I might as well have given it away.

Mr. MACKEY: I object to this form of questions because the bill is not shown here, and counsel is simply stating what the paper contains without showing the paper.

Q. I now repeat my question as to which of these statements is true. You said in your cross-bill that you had left, after paying encumbrances, $175, and you say now that you had $75 left. Which is true?

Mr. MACKEY: Objected to on the ground that it is stating the contents of a paper-writing which is the best evidence of what it contains.

A. When the $500 was given to me and the house I had not disposed of the house and I intended to keep it. I do not see how I could know what I was going to get for it.

Q. How came you to say in your cross-bill that after settling encumbrances you had left $175?

Mr. MACKEY: Objected to because it is not shown that she said so in the cross-bill.

A. I know nothing about that. It is something I never heard of before.

Q. Did Mr. McIntire charge you any commission for making that sale?

A. Well, I thought he did; everything was taken out, and it left just so much.

Q. I want to ask you again if Mr. McIntire did not exhibit to you a written statement, showing you just where the money had been appropriated and how.

749 A. I think not.

Q. Were you not satisfied at the time that you received the correct amount?

A. No, sir; I was not.

Q. Did you tell Mr. McIntire that you were not satisfied?

A. I did, and I told him so ever since, whenever I had occasion.

Q. You told him at the time that you were not satisfied?

A. I did.

Q. And what did you tell him that you were dissatisfied with?

A. With the small amount I received.

Q. Did you tell him that you were dissatisfied with the way the money was appropriated or the amount that the property sold for?

A. Well, I do not know how much the property was sold for.

Q. You said that it sold for $300. Was it that you were dissatisfied that it sold for $300 or that you were dissatisfied because of the expenditures—the payments made out of the $300?

A. I guess it was the expenditures.

Q. What item of the expenditures were you dissatisfied with?

A. I do not know. I did not know that there was anything but a little taxes on it; it was a very small house; no improvements, and very small taxes to be paid on it.

Q. Then Mr. McIntire did show you a statement as to what payments of the money were made?

A. He said that there was a great deal of taxes. That is all I remember.

Q. Did he not read to you or show you a paper setting out what had been paid?

A. Not that I remember.

Q. Do you say that he did not?

A. I do not remember.

Q. Do you know that Mr. McIntire went up to the War Department went to see your husband to get him to pay the taxes?

A. Mr. McIntire said he went up to get him to buy the house. I knew that he would not buy it.

Q. Did Mr. McIntire tell you that your husband would not pay the taxes?

A. No, sir.

Q. Did he tell you that the taxes were nearly one hundred dollars?

A. No, sir.

Q. Why did you take the money if you were dissatisfied with it?

A. Because the house was sold.

Q. Why did you not demand from Mr. McIntire more money?

A. I did not know that I could. I did not know anything about business. I thought they were dealing honestly with me.

Q. Did you ever go to consult a lawyer about it?

A. No, sir.

Q. You were then in litigation with your husband, were you not?

750 A. Yes, sir.

Q. At that time was not Mr. Hosea B. Moulton your counsel?

A. Yes, sir.

Q. Did you not tell him about this sale?

A. I think it was mentioned.

Q. Did you complain to him that you had not gotten enough for your property?

A. No, sir; I do not think I did.

Q. Did you tell him that Mr. McIntire had swindled you or that you suspected he had?

A. I only consulted him about my business that he had in hand.

Q. You did not consult him about this transaction at all?

A. No, sir.

Q. You told him about the sale, but did not consult him about your suspicions in regard to it at all?

A. I do not think so.

Mr. MACKEY: I object to this line of examination because it is not upon anything brought out in the direct examination and is not pertinent to the case at all. The bill does not ask relief upon the ground that the property did not bring enough.

Q. Did you sell that property partly for the purpose of getting money to pay Mr. Moulton's fees?

A. No, sir; I paid Mr. Moulton down at the beginning fifty dollars cash. I had one hundred and gave him half.

Q. Now, you say that you have several times since complained to Mr. McIntire on account of this transaction?

A. I did.

Q. When did you say and where that he had not dealt fairly with you in regard to this transaction?

A. Whenever he has spoken to me.

Q. When has he spoken to you?

A. Well, I cannot say when. I was in a public eating-room one Sunday on 9th street, and he waited until I came out and spoke to me, and I said that I did not feel sociable with him because that $75 was always in my way and I could not help thinking of it.

Q. What did he say?

A. Indeed I do not know what he said.

Q. How long ago was that?

A. Not very long ago.

Q. Since this suit was brought?

A. No, sir.

Q. Shortly before?

A. Quite awhile ago.

Q. Was it after you had been consulting with Mr. Mackey?

A. No, sir; I had not seen him and did not know there was such a person. I have some neighbors who have talked with me on the subject.

Q. Were you not in a hurry to have this property sold?

751 A. Well, if I thought of what Mr. McIntire said, that he was persecuted every day on account of something to be paid—water or something—some tax—I was then.

Q. I asked you the simple question whether you were not urgent about the sale of it.

A. Yes, sir; I might as well say yes.

Q. Did not Mr. McIntire tell you that he could probably get a better price if he had more time to do it?

A. I do not remember anything like that.

Q. Did Mr. McIntire tell you that he was commissioned by Miss Taylor to buy cheap properties?

A. No, sir; not that I remember.

Q. Have you not been frequently in Mr. McIntire's office since this transaction?

A. No, sir.

Q. You have never been there since?

A. O, yes; I have been there since. I thought perhaps if I went he might relent and pay me some more money.

Q. Did you ask him to relent and pay you some more money?

A. I think I have.

Q. Then you complained when you went there about this transaction, did you?

A. Yes, sir; I always have. My friends know that I was not treated right, as well as I do.

Q. Will you look at that signature there and state whether that is your signature or not?

A. It is different from what I write now. That is my name.

Q. Is that your signature?

A. I do not know.

WITNESS: Is this the deed of the house?

Mr. HENKLE: I am not saying what it is.

Q. Is that your signature?

A. I know I wrote my name once in that office, but I do not know what it was for.

Mr. HENKLE: Well, that is the deed.

WITNESS: I was not told that I had sold it until I brought the man up. I signed a piece of paper before.

Q. Is that your signature?

A. It looks nervous and crooked. I cannot remember. That is all I can say.

Q. Cannot you tell whether it is your signature? Do you not know your own handwriting?

A. I do not make that kind of an "A."

Q. Just say yes or no as to whether that is your signature.

A. I cannot say. I am not certain. I will not say that it is or that it is not.

Redirect.

By Mr. MACKEY:

Q. Mr. Henkle has asked you whether when you got the money from Mr. McIntire you were satisfied that it was the right
752 amount; to which you answered that you were not. Now, in view of that, I ask you this question: Whether you mean that you were not satisfied with the amount you got or whether you were not satisfied that it was the correct amount.

A. Well, I do not think I was satisfied with either one.

Q. Whether you were satisfied that Mr. McIntire gave you a correct statement as to the amount that was left after the payment of all expenses.

A. O, I expected that was all right.

Q. But you were not satisfied with the amount that you received?

A. Yes, sir.

Q. Did not you and Mr. McIntire about that time attend the same church?

A. Yes, sir.

Q. Did you attend that church at the time you took the property to him?

A. Yes, sir.

Q. And some time before that?

A. Yes, sir.

Q. Was that the way you got acquainted with Mr. McIntire when you took the property to him for sale?

A. No, sir.

Q. You did not take the property to him for that reason?

A. No, sir; I do not depend upon churchmen entirely.

Q. How did you come to put the property in Mr. McIntire's hands?

A. I was living at the house of Mr. John Hodges, and his brother James told me to put the property into Mr. McIntire's hands.

Q. You said that when you came out of a dining-room you met Mr. McIntire. Was it in the dining-room or outside that you met Mr. McIntire?

A. It was outside.

Q. And you say that you made a remark to Mr. McIntire, but that you do not know what he replied. Do you mean that you do not remember or that you do not know?

A. I do not remember what he replied.

Q. Did Mr. McIntire urge you to sell the property because he was pressed to pay taxes upon it?

A. There was some debt—I do not know what it was—that troubled me. It made me anxious to get rid of it. Whether it was water or something else I do not know. He told me about it, but I did not know anything about it.

Q. Well, Mr. McIntire told you that he was urged to pay the taxes on this property and that you had better sell it for that reason?

A. Well, it sounded like this: This must be settled.

Q. He told you that there was something on the property and that it must be settled?

A. Yes, sir; that they were annoying him continually with it, whatever it was. I never asked to find out. I did not want the trouble of it.

753 Recross.

By Mr. HENKLE:

Q. Do I understand you that Mr. McIntire was urging you to sell that property?

A. Well, I will not call it simply urging.

Q. Did you not go to Mr. McIntire to get him to sell it?

A. I did.

Q. Did he solicit you to come to him?

A. No, sir; I went to him.

Q. And authorized him and directed him to sell it?

A. I did.

Q. And were you not anxious to sell it at that time?

A. Certainly I was.

ANNIE M. ACKERMAN.

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(Adjourned.)

OCTOBER 10, 1891.

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Hosea B. Moulton.

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Direct examination.

By Mr. MACKEY:

Q. You are a member of the bar?

A. Yes, sir.

Q. Do you know Annie M. Ackerman?

A. Yes, sir.

Q. You represented her in a divorce proceeding?

A. Yes, sir.

Q. Did you file a cross-bill in that case for her?

A. I think so.

Q. Is that the cross-bill filed in equity cause No. 8729, of Ackerman *vs.* Ackerman?

A. Yes, sir.

Q. The eighth paragraph of this bill contains a statement to the effect that Mrs. Ackerman received for a little piece of property on 11th street, after settling encumbrances, the sum of $175. Do you remember from what you got that statement to incorporate in the cross-bill?

A. I have no recollection about it.

Q. Did you have any conversation with Edwin A. McIntire about the sale of that house?

A. I do not remember any particular conversation that I had with Mr. McIntire; there is an impression in my mind that there was some property sold, and that Mr. Edwin A. McIntire had something to do with it, but the details of it have gone out of my mind.

Q. Mr. McIntire testified in that case, did he not?

A. I think he did—that is, in the divorce case.

754 Q. He testified for the complainant in the cross-bill of Mrs. Ackerman; he was called by you, I believe?

A. I think so; that is my impression.

Q. You do not remember whether you received the information from Mrs. Ackerman or not?

A. No, sir; I do not remember whether I received it from her or from Mr. McIntire or from whom; I have no distinct recollection about it.

Mr. HENKLE: Cross-examination waived.

H. B. MOULTON.

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John G. Hodges.

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Direct examination.

By Mr. MACKEY:

Q. Do you know Mrs. Annie M. Ackerman, the complainant in this case?

A. Yes, sir.

Q. Where did she live in 1882?

A. I could hardly tell you; I do not remember the particular dates.

Q. Did she ever live at your house?

A. Yes, sir; she had a room and lived at my mother's house.

Q. Can you give any idea how long ago that was?

A. I should judge it was about nine or ten years ago.

Q. Do you remember the circumstance of Mrs. Ackerman coming home and speaking of selling her house and how much she got for it?

A. Yes, sir.

Q. You may state what that circumstance was.

Mr. HENKLE: Objected to as incompetent and irrelevant and hearsay.

A. Well, I knew that she owned the house and was trying to sell; my father had been trying to sell it for her at the time, and the house was out east somewhere, and I think she was offered $600 or $800 for it. My father had been talking to a man about buying the house, and while they were working the matter up she came home one day and said that Mr. McIntire had sold the house, and said that she got seventy-five dollars for it. I spoke up and said that I would have given her a good deal more money than that for the house.

Q. What was her condition at that time?

A. She was disappointed over it and thought she ought to have received more money for it.

Q. To whom did she complain?

A. To my mother.

Q. Was she crying, or what?

755 A. No, sir; I do not think she was exactly crying, but she seemed to be worried over it. She was not laughing over it.

Q. Did you and your mother at that time speak about the amount of money that she had received?

A. Yes, sir. All that was said was that she was crazy for taking that amount of money for the house.

Q. How much money was it?

A. We did not count the money. She said it was seventy-five dollars.

Mr. HENKLE: Objected to as irrelevant, incompetent, and hearsay.

Q. How long have you known Mrs. Ackerman?

A. Well, I think as long as I can remember—for twenty years.

Q. Do you know her intimately or not?

A. I know her intimately.

Q. What is her mental capacity for business?

WITNESS: At this time?

Mr. MACKEY: Yes, and at that time, in 1882.

A. I do not think it was very good.

Mr. HENKLE: Objected to as incompetent. The bill does not charge that she was an imbecile or incapable of transacting business.

Q. Was she below or above the average of intelligence for conducting business, such as the selling of a house, and knowing the value of property?

A. She is a smart woman, I must say. She is well educated.

Q. In her mental capacity to transact business, her experience and general knowledge of affairs, what sort of a woman is she?

A. Well, I should think she is below the average.

Cross-examination.

By Mr. HENKLE:

Q. Well, why do you say she is below the average?
A. Because I think any one could talk her into doing anything.
Q. Do you mean by that she is easily entreated?
A. Yes, sir.
Q. Not for want of intelligence?
A. She is a smart and intelligent woman.
Q. She was a clerk in the Agricultural Bureau, was she not?
A. Yes, sir.
Q. A very competent clerk?
A. Well, I do not think she was a clerk there; she had something to do with the packing of seed.
Q. Was she not a clerk there?
A. I could not say whether she was called a clerk or a laborer.
Q. She is now engaged in the Government Printing Office?
A. Yes, sir.
756 Q. Is she not rather above the average in intelligence for a woman in her sphere of life?
WITNESS: Just at this time?
Mr. HENKLE: Throughout her life.
A. No, sir; I do not think she is now.
Q. When she boarded at your mother's house?
A. No, sir; she had a great deal of trouble at that time.
Q. Did that affect her intelligence?
A. I suppose she could write and read just as well then as now.
Q. Did she know just as much?
A. Yes, sir.
Q. Was she not above the general run of women in her sphere of life in intelligence?
A. No, sir; not above.
Q. Quite equal?
A. I should think equal in intelligence.
Q. As any women in her sphere of life generally?
A. Yes, sir.
Q. Was she not as competent to transact business as others who have not had much business to transact?
A. No, sir; I do not think so, for the simple fact that she is easily led into things.
Q. She had as much capacity to understand transactions as any other woman?
A. I think so.
Q. You think she is easily persuaded to do things?
A. Yes, sir.

Redirect.

By Mr. MACKEY:

Q. When in reply to Mr. Henkle's questions you say that she was an intelligent woman, do you refer to her education?
A. Yes, sir.

Q. Her mental capacity and education are two different things; do you understand that distinction?

A. Of course. She is crazy. She could be well educated and be crazy too.

Q. In regard to her intelligence (not in regard to her education) and being able to cope with sharp and shrewd business men, what is her capacity?

A. I should not think she would have much show.

Recross.

By Mr. HENKLE:

Q. How would it be with women in general?

A. I should not think any one would have much show.

Q. With a man like Mr. Mackey, would she have much show?

A. I do not know.

757 Redirect.

By Mr. MACKEY:

Q. You say that Mrs. Ackerman at that time had a great deal of trouble; what was that trouble?

A. With her husband.

Q. She had a divorce suit pending at that time?

A. Yes, sir; well, I do not know that it was exactly at that time, but it was either a little before or after that.

Q. Was she a good deal worried about it?

A. O, yes, indeed; the woman has had worry the best part of her married life.

JOHN G. HODGES.

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(Adjourned.)

FEBRUARY 2, 1892.

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ANNIE M. ACKERMAN, who, being recalled for and on her own behalf, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. I have not here your testimony as written out by the examiner and as given at your last examination, I think, but you were there asked by General Henkle how you came to see me, and you stated, I think, that I wrote to you. Now, you may state just how it was that you happened to see me first.

A. You wrote to me to come down; that you wanted to ask me a question and to look over some papers in which you had seen my name.

Mr. HENKLE: Where is that letter?

WITNESS: Indeed I do not know whether I destroyed it or not; I kept it for some time, but I may have destroyed it.

Mr. MACKEY: This is in response to your cross-examination, General Henkle, of Mrs. Ackerman the last time that she was on the witness stand.

Q. Well, in response to that letter you came to my office?
A. Yes, sir.
Q. When you came here what was asked you?
A. You asked me who Emma Taylor was, and you said that you had seen where I had a business transaction with her.
Q. You mean a conveyance or deed?
A. Yes, sir.
Q. Did you tell me who Emma Taylor was?
A. I did not, as I did not know her and never saw her.
Q. That is the way you first saw me?
A. Yes, sir.

758 Cross-examination.

By Mr. HENKLE:

Q. Well, now, will you please carry that a little further and state how you came to employ Mr. Mackey?
A. Well, I recited how I knew this woman or had heard of her. I had to say something about how I knew her or heard the name, and I told him that when I sold it to Emma Taylor I did not see her, but that I was told I sold it to her.
Q. Sold what?
A. The house.
Q. Your property?
A. Yes, sir.
Q. Then did Mr. Mackey propose to bring suit for you?
A. Well, I guess I started that myself, very naturally.
Q. Will you state what the fact is as to how that came about?
A. I said, "Do you think you can do anything for me?"
Q. Did he propose first to take your case?
A. No. He just wanted to know who this Emma Taylor was.
Q. Then you asked him if he could do anything for you?
A. Yes, sir. It was very natural in a person who has been defrauded.
Q. Then what?
A. You know the rest.
Q. No; I do not. Did you propose to give him part of the property if he recovered it?
A. Well, I supposed that would come later.
Q. Did you not agree about it then?
A. No, sir; I had not made any agreement.

Mr. MACKEY: While I do not object personally, the question it clearly illegal as to the relations between counsel and client about the amount of fees he is to be paid for his services. It has not even the most distant relevancy to the matter in question, and none ought to know it better than the counsel for the defendants. I therefore object to the question on the ground of its irrelevancy.

Mr. HENKLE: Counsel for the defendants replies that he is simply following up the examination by the counsel for the complainant of his own client with regard to a certain conversation, and he is asking her what occurred in the same conversation.

Mr. MACKEY: It was in response to your cross-examination heretofore of the witness.

Q. Now, I ask you whether you did agree with Mr. Mackey that he should prosecute your case for part of what he might recover.

A. I was to pay him for his services.

Q. The question is, Did you agree to give him part of what he might recover?

A. I do not think I made any agreement.

759 Q. You had no understanding or agreement with him about his fees in this case?

A. No, sir.

Q. Did you pay the expenses of bringing this suit?

A. Yes, sir.

Q. How much did you pay?

A. Ten dollars.

Q. Is that all?

A. Yes, sir.

Q. You have not paid anything for taking the testimony?

A. No, sir.

Q. And you say that you had no agreement with Mr. Mackey to divide the property in case he recovered it?

A. I shall pay him, of course, my share of the expenses.

Q. Is it understood that you are to divide the property with him if he gets it?

A. I do not know about a division of the property, but I shall pay my share of the expenses if anything comes to me.

Q. Do you mean to say that you had no agreement with him about his fees at all?

Mr. MACKEY: All this line of cross-examination is objected to, and I here notify counsel that I will move the court to strike it out.

A. I have answered it.

Q. Do you say on your oath that you have no agreement or understanding with Mr. Mackey about the division of the property?

A. I say that I agreed to pay any expense that might be incurred in getting the property.

Q. Do you say that you did not agree with him to give him part of the property in case he recovered it?

Mr. MACKEY: I instruct the witness that she is not bound to answer any question of that sort, and if the counsel desires an answer he must go to the court and require the answer before the witness will do so.

Q. Now, do you decline to answer because you are instructed not — answer by your counsel?

A. I do.

Mr. MACKEY: And if counsel for the defendant desires to know anything further about my private business with my clients he will have to get an order of the court before I shall permit any further examination of this sort. I do not propose to have my private business brought into the court or made the subject of discussion by General Henkle or anybody else.

Mr. HENKLE: That is all.

ANNIE M. ACKERMAN.

Subscribed and sworn to before me this 2nd day of February, 1892.

ALBERT HARPER, *Examiner.*

760 *Mrs. Frank Wright.*

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Are you acquainted with Mrs. Annie Ackerman, the complainant in this cause?

A. I have known her for about fifteen years.

Q. Did you ever collect the rent of this property which Mrs. Ackerman owned?

A. Yes, sir.

Q. Do you remember a conversation you had with Mrs. Ackerman in regard to her having sold her property and what she got for it?

A. Yes. She came down and told me not to collect the rent any more; that she had signed a paper to Mr. McIntire, supposing that she was giving him the right to sell the property, and that I must not collect the rent any more, as some one else would.

Mr. HENKLE: I object to this testimony as incompetent because the conversation between the complainant and the witness was not had in the presence of the defendant Edwin A. McIntire.

Q. Did you at that conversation ask Mrs. Ackerman what she had gotten for the property?

A. Yes. I asked her what the house had brought and she said seventy-five dollars. I told her that the house certainly was worth more than that; it certainly should not have been sold for any such amount. The house was a good one at the time I collected the rent.

Mr. HENKLE: Objected to as incompetent.

Q. Did she tell you how she came to only get seventy-five dollars for it?

A. No. I asked her why she agreed to sell it for that, but she

could not tell, and she did not know who bought the house. She was all alone in the world and I felt sorry for her.

Mr. HENKLE: Same objection.

Cross-examination.

By Mr. HENKLE:

Q. Do you know of her offering to sell the property to anybody else?

A. No, sir.

MRS. FRANK WRIGHT.

Subscribed and sworn to before me this 2nd day of February, 1892.

ALBERT HARPER, *Examiner.*

761 ANNIE ACKERMAN, the complainant, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. You know Mrs. Wright and have heard her testify as to the conversation which she had with you in regard to the sale of the house, and that you only got seventy-five dollars for it. How soon after you received the money from Mr. McIntire was it that this conversation occurred with Mrs. Wright?

A. Right away, because she had the renting of it.

Mr. HENKLE: I object to the witness detailing any conversation between her and anybody else when Mr. McIntire was not present as incompetent.

Q. What do you mean by right away? Was it the same day or the next day, or how soon after?

A. The next day.

Q. Was it the next morning or the next evening?

A. It was the next evening.

Q. Why did you go to Mrs. Wright?

A. Because she had the renting of the house and it was necessary to let her know it.

Q. Did she live near you?

A. Yes, sir; across the street.

Q. And she collected the rent from the party who was in the house for you?

A. Yes, sir.

Q. And you went there to tell her to stop collecting the rent?

A. Yes, sir.

Q. And it was at that interview that you told her what you had gotten for the house?

A. Yes, sir.

Mr. HENKLE: I make the same objection as heretofore to all of this and waive cross-examination.

ANNIE M. ACKERMAN.

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Testimony for Defense.

APRIL 13, 1893.

* * * * * * *

Martha McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. You are the same Martha McIntire who has heretofore testified in these several cases and a sister of the defendant Edwin A. McIntire?

A. Yes, sir.

762 Q. Do you own the property No. 408 11th street southeast, in this city, known as the Ackerman property?

A. Yes, sir.

Q. When did you buy that property?

A. I think in 1884.

Q. From whom did you buy it?

A. I bought it from Emma Taylor.

Q. What did you pay for it?

A. Six hundred dollars ($600).

Q. Well, where did you meet her, or did you meet her at all?

A. I never met Emma Taylor but once, and that was in my brother's office.

Q. How did you communicate with her when you bought this property?

A. My brother, Edwin A. McIntire, attended to all that.

Q. Your brother bought it for you?

A. Yes, sir.

Q. And he paid the money for you?

A. Yes, sir.

Q. What kind of a house was it?

A. It is a frame house, a two-story frame house, with high steps, and colored people, I believe, live there now.

Q. Well, is it on grade?

A. Oh, yes; it is high up, high steps.

Q. About how high above grade?

A. Twelve or fifteen feet, I guess. It is pretty high.

Q. And have you owned it ever since and continued to own it?

A. Yes, sir.

Q. Who collects the rents for you?

A. My brother, Edwin A. McIntire.

Q. Did your brother have any interest in the property?

A. No, sir; not at all.

Q. Was it your money that he paid for it?

A. Yes, sir; it was my money.
Q. And he had no interest in it whatever?
A. No, sir; none at all.
Q. And he never had any part of the rents?
A. No, sir.
Q. He collects the rents regularly and pays them over to you?
A. Yes, sir.

Cross-examination.

By Mr. MACKEY:

Q. Did your brother give you the deed to the property?
A. Yes, sir; I have the deed for the property.
Q. What did you do with it?
A. I guess you have it now.
Q. You mean that the examiner has it?
763 A. Yes, sir.
Q. What did you do with it immediately after your brother gave it to you?
A. I took care of it.
Q. Why did you not record it?
A. Well, I do not know; I suppose it was carelessness on my part. There are a good many things that I ought to have done, but, like other people, I forget things sometimes.
Q. You did not record the Southey deed, either?
A. There were two or three deeds that were not recorded.
Q. I asked you about the Southey deed. Did you record that?
A. I do not remember.
Q. Did you ever record a deed from Emma Taylor immediately after you got it?
A. I never recorded deeds in this city. My brother and my sister attended to that.
Q. After you moved to Washington in 1882 and bought these several properties from Emma Taylor at different times—I believe you have testified that you bought the Barbara Brown property from Emma Taylor; that you bought the Southey property from Emma Taylor; that you bought the Ackerman property from Emma Taylor, and that you bought the Pryor property from Emma Taylor—how did it happen that you did not record the deeds that you got from Emma Taylor until long after you got them?
A. My brother and sister attended to that part of the business for me.
Q. You never attended to the recording of deeds?
A. I never recorded deeds in this city.
Q. You left that to him?
A. I thought my sister, being at the office so often, could attend to that for me.
Q. How could they record the deed for you if you had it?
A. I gave it to them to record it.

Q. How did you pay Emma Taylor for this piece of property—this $600—in cash or by check?

A. I do not know whether my sister gave a check or the cash. She got it out of bank and she paid it as she went downtown, attending to business on the way.

Q. She went down and drew out six hundred dollars from the bank and gave it to your brother?

A. That is the way I told her to do when she attended to business for me.

Q. Did she do that in this particular case?

A. I cannot say that she did that in this particular case. She did that in some instances, and I suppose this is one of them.

Q. Did you collect the rents of this property?

A. No, sir; my brother, Edwin A. McIntire, collects all of the rents.

Q. I believe you stated in the Pryor case that you would go down to your brother's office and look over his books and see that
764 they were all right about your rents, and then he would pay you what was due to you?

A. Yes, sir.

Q. Did he pay you in cash or by check?

A. Sometimes he would give me a check, and I would sign it, and then he would give me the money on it.

Q. Then he would keep accounts of these rents?

A. Yes, sir.

Q. You saw them yourself?

A. Yes, sir.

Redirect examination.

By Mr. HENKLE:

Q. Where did you keep your deeds?

A. I kept them for a while in the safe-deposit company after we got a box there.

Q. When did you get the box?

A. At the time of the first inauguration of President Cleveland. I do not know what year that was.

Mr. EDWIN A. MCINTIRE: 1885.

WITNESS: Yes; 1885.

Q. Did you ever give your brother your deeds to keep after you got that box?

A. I do not remember. I might have for a while. I do not see why I should have given them to him after I once put them in the box.

Q. As a matter of fact, did you not take your deeds, when you got them, and put them in your box?

A. Yes, sir; that is my recollection.

Q. Did you ever give them to him to record?

A. Oh, the record part. I either gave them to him or my sister.

Q. Whay did they not do it?

A. I guess they did when I gave them to him.

Q. Some of these deeds have not been recorded. Did you ever give them to your brother to record?

A. Either to him or my sister.

Q. And he failed to record them?

A. No, sir; I do not want to throw the blame on him, for whatever carelessness there was——

Q. Either you or he was careless. Which one was it?

A. I take the blame.

Q. When you got these deeds did you give them to him to record?

A. No, sir; I never thought anything about the recording part.

Q. What did you do with them?

A. I put them in the box in the safe-deposit company.

Q. Then you did not give them to him to record?

A. Not at that time.

765 Q. There are some deeds produced here in evidence since these cases began which were never recorded——

A. (Interposing.) That was carelessness.

Q. Whose carelessness?

A. My carelessness.

Q. Then you did not give them to him to record?

A. No, sir; I could not have given them to him to record.

Q. There are certain deeds which were not recorded at all until after these suits were recorded—certain deeds which you had and produced in evidence here?

A. Yes, sir; there were several.

Q. Now, you say that you gave your brother those deeds to record and he did not do it?

A. No, sir; I did not do it at all.

Q. You are mistaken about that?

A. Yes, sir. You know there were other houses. I got them mixed up. I have other houses besides these.

Q. You took your deeds and put them in the safe-deposit box?

A. Yes, sir.

Q. When these suits began who produced those deeds?

A. I got them out.

Q. And then you gave them to whom?

A. To my brother, Edwin A. McIntire.

Q. That is the time you gave them to him?

A. Yes, sir.

Q. Then, when you originally got the deeds, you did not give them to him to record?

A. No, sir; I did not give them to him then. I must have gotten them mixed up with some of the other houses.

Q. What was your idea about recording deeds?

A. Well, my idea was if I put it in a safe place that it was safe enough.

Q. That is, that the recording of it was only to preserve it?

A. Yes, sir.

Q. And if you was sure that you had the deed preserved it was immaterial, according to your idea, whether it was recorded or not?

A. Yes, sir; I thought my property would be safe.
Q. Was that the reason you were not particular about that?

Mr. MACKEY: Question objected to as leading.
(NOTE.—No answer to last question.)

Q. Then, why did you not record your deeds?
A. I do not know. It was carelessness and ignorance on my side, I suppose. I do not know what else to call it.

Recross-examination.

By Mr. MACKEY:

Q. You say that when you got the deeds from your brother of these various properties which you bought from Emma Tay-
766 lor you took the deeds and put them in the safe-deposit company without recording them?
A. Yes, sir.
Q. You are positive of that?
A. Yes, sir; they were not recorded; that is the way it was.
Q. You have bought and sold a good many properties, have you not?
A. Yes; several.
Q. Did you not know that it was necessary to record a deed?
A. Well, I know it now; yes, sir.
Q. But you never knew it before?
A. Well, people have to live and learn.
Q. You had been buying property and loaning money on mortgages and things of that sort, and you never knew until this suit commenced that it was necessary to record a deed?
A. No; you do not understand me; I knew it was necessary, but I did not think it was absolutely necessary, and that if I kept the deed in a safe place it was all right.
Q. And your brother never said anything about it?
A. I dare say he thought I had them recorded. I have recorded deeds in Philadelphia. I have been to the recorder's office there.
Q. You have recorded deeds immediately after you have bought property, have you not?
A. I have not recorded any deeds in this city at all.
Q. You had your brother record them?
A. My brother or my sister; they attended to my business of that kind.
Q. But your habit was, at least with respect to these Emma Taylor deeds, that when a deed was delivered to you immediately you put it in a safe-deposit company and supposed it was safe there?
A. Well, I may have others not recorded. I will look and see.
Q. I asked you in respect to the Emma Taylor deeds.
A. Yes, sir; those I know of.
Q. You did not keep them at home?
A. No, sir.

Redirect examination.

By Mr. HENKLE:

Q. Before you got the safe-deposit box, where did you keep your deeds?

A. I kept them in my brother's safe or else at home; one of the two places.

Recross-examination.

By Mr. MACKEY:

Q. Did you not testify a moment ago that immediately after you got these deeds you put them in the safe-deposit company and never kept them at home?

767 A. That was after I got the safe-deposit box. I could not put them there before I had the box.

Q. I asked you when you got these Emma Taylor deeds — you did not put them immediately in the safe-deposit box and you answered, "Yes," did you not?

A. Yes, sir; and I said that was after I got the safe-deposit box, and that I could not put them there before I had the box.

Q. But I asked you whether when you got these deeds from Emma Taylor through your brother you did not put them immediately in the safe-deposit box, and you said, yes—that you never kept them at home.

A. I was not in the habit of keeping them at home.

Q. Where did you keep these deeds?

A. If I did not have a safe deposit box and did not keep them at home I must have put them in my brother's safe.

Q. Then you gave them to your brother to keep?

A. I had a bundle of papers in my brother's safe—I had forgotten that—and I kept them until I got a safe place.

Q. You got these Emma Taylor deeds at different times?

A. Yes, sir.

Q. When Emma Taylor made to you a conveyance your brother would give you the deed, would he not?

A. Yes, sir.

Q. What did you do with the deed?

A. Before I got the safe-deposit box I put them in this large envelope or bundle which I had in my brother's safe and tied and fastened it up and he did not, I suppose, go into that; and after I got the safe-deposit box I put them in there.

Q. You got these deeds scattered over a number of years. When you got the first deed what did you do with it?

A. I do not remember the first deed. When I got the deeds before I got the safe-deposit box, as I said before, I put them in this large envelope in my brother's safe.

Q. You have testified in several ways about this. I want you to answer more definitely about it. When you got the deed of this Ackerman property, for instance, from your brother what did you do with that deed?

A. I cannot think in what year I got the safe-deposit box.

Q. It makes no difference in what year you got the safe-deposit box. I am asking you what you did with the deed.

A. I could not put it in the safe-deposit box before I had it. When I had the box I put it there.

Q. I am asking you what you did with the deed.

A. I cannot answer any better. After I got the safe-deposit box I put valuables in there. Before I got that box I kept them in a large envelope in my brother's safe.

Q. You then say that when you got this deed of the Ackerman property from your brother you put it in his safe. Is that correct?

A. If it was before I got the safe-deposit box; but I cannot remember the date.

768 Q. I am not asking you about the safe-deposit box. You know what you did with the deed?

A. If I got the deed before I got the safe-deposit box I put it in my brother's safe; but if I got it after I got the safe-deposit box I put it in there.

Q. Do you remember what you did with the deed?

A. I cannot say positively about things I do not know.

Q. Then I understand that before you got this safe-deposit box your habit was when you got a deed to give it to your brother to keep?

A. I had a bundle in his safe of my things.

Q. You had a bundle in his safe, and when you got a deed you put — in there. Now, what did you do with the deed?

A. I would have him get the bundle out of the safe for me and I would put the deed in the bundle.

Q. Did you do that in the presence of your brother?

A. Yes, sir; he was there.

Q. He would give you the deed, and then you would immediately get the bundle out of the safe and put the deed in the bundle in his presence.

A. Yes, sir; I think that is what I did.

Mr. HENKLE: She did not say in his presence.

WITNESS: Whe- he was there he opened the safe. I could not open the safe.

Q. And that was the way. When one of these Emma Taylor deeds was given to you after you got your safe-deposit box, then you went and got these deeds out of this bundle out of your brother's safe and put them in the safe-deposit company. Is that correct?

A. Yes, sir.

Redirect examination.

By Mr. HENKLE:

Q. Mr. Mackey has you say that you took your deed and in the presence of your brother you put it in the bundle and into his safe. What do you mean by it being in his presence?

A. Well, he was in the office. He may have been attending to a customer with his back to me.

Q. You did not mean that his attention was called to it and he superintended the work?
A. No, sir; he did not have anything to do with that.

Recross-examination.

By Mr. MACKEY:

Q. During all this time when you were getting these deeds from Emma Taylor did he ever suggest to you to put them on record?
A. I do not know.
Q. He was agent for you, was he not?
A. Yes, sir.
Q. Attending to all your real-estate matters?
769 A. Yes, sir; but he has business of other people to attend to besides mine. He thought I ought to have sense enough to know that.
Q. He bought property for you and paid for it for you?
A. Yes, sir; with my money.
Q. He got the money from you?
A. Yes, sir.
A. And when he sold property he gave the money to you?
A. Yes, sir.
Q. And he attended to the making and execution and acknowledgment of all the deeds, did he not?
A. Yes, sir.
Q. And you left it all to him, did you not?
A. Yes, sir; he attended to all that.
Q. He attended to the negotiation of the sale and the execution and acknowledgment of the deeds, all of which you left to him?
A. Yes, sir.
Q. But the recording of the deeds he left to you?
A. Yes, sir; I attended to that kind of business in Philadelphia, and I suppose he thought I had sense enough to attend to it here.

MARTHA McINTIRE.

* * * * * * *

Edwin A. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. You are one of the defendants in this Ackerman case?
A. Yes, sir.
Q. Will you state when and how your acquaintance with Mrs. Ackerman began?
A. By a letter from her dated January 29, 1882, in which she asked me to see as to the rental of her property.
Q. This particular property in controversy?
A. Yes, sir; No. 408 11th street southeast, in this city.
Q. Where was that letter written from?

A. I hold the letter in my hand. It was written from Camden, New Jersey, under date of January 29, 1882, in which she desired me to take charge of the house and wished me to commence the collection of the rents on the 1st of February, 1882, saying, "I did desire to sell, but was advised to get a trustworthy agent." It is signed "A. M. Ackerman." I thought at the time that I received the letter that the writer was a man.

Q. What did you do?

A. I answered, addressing the writer as "A. M. Ackerman, Esq.," and she replied, telling me that she was a woman and describing the property more fully. In the same letter I told her that I had been to the house and found colored people in every room.

770 Mr. MACKEY: I object to the statements of the witness as to the contents of a letter which he has not shown.

WITNESS: I have not the letter that I wrote to her.

Mr. BOARMAN: You did not keep a copy of it?

Mr. MACKEY: Well, Mr. McIntire never called for the original.

WITNESS: I called for another letter, but never got it.

Mr. HENKLE: I here give this letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 1.)

Q. In pursuance of the request contained in that letter, did you take charge of the property?

A. I did.

Q. What did you do with it?

A. I collected some rents from the property and reported to her.

Q. Look at this card which I now hand you and state what it is.

A. This is a postal card dated Philadelphia, April 6, 1882, which I received from Mrs. Ackerman, in her own handwriting, saying that she received my letter and would like to sell the property, as it never had been any profit to her. She asked me whether that was a good time to sell, and says, "A gentlemen with whom I am stopping will call next Monday to see you."

Mr. HENKLE: I here give that postal card in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 2.)

Q. What did you do, if anything, in pursuance of that postal card?

A. I remember writing her at one time asking for her lowest figure.

Q. Did she afterwards come to Washington to live?

A. She came about the same time that I received that postal card.

Q. Came here to live?

A. Yes, sir.

Q. Look at the paper I now hand you and state what it is.

A. This is a letter which I also received from Mrs. Ackerman, dated Camden, N. J., Feb. 3, 1882, in which she says that she is glad to hear from me (referring to the letter I wrote in response to hers of Jan. 29th) and wished she had consulted me sooner. She says,

"Mr. Wright received the money (rents, she means, I know) and said he spent it because they really needed bread," and then she goes on and says that she met Mr. Griggs on the street and asked him if he could sell the property for her, and then she goes on and says that the man next door to the property had complained because of the high ground upon which this property is located and suggests that if the party objected to the high ground on which her house was located he might buy the property and cut the bank away.

771 Mr. MACKEY: I object to the witness reading the contents of letters in this way.

Mr. HENKLE: I here give the letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 3.)

Q. Will you please state, now, what followed in connection with this property?

A. Shortly after the receipt of that card of April, 1882, Mrs. Ackerman came to my office and asked me whether I would buy that property or could get a purchaser for her. She said that she wanted to sell at once; that she was in need of money; that she was involved in litigation and needed some immediate cash. I told her that if she made an immediate sale she could not realize as much from her property as if she gave me more time, and I requested her to let me advertise it in the usual way. She said, No; that she must sell at once; that a Mr. Wood, I think his name was, had offered her $300 for the property, and that she had been offered by Mr. Fred. Blumer $200, but that she thought she ought to get more for it, and that she had been offered at least that much by Mrs. Samuel Bieber. She seemed to insist upon an immediate sale. I told her that I had a customer who would buy small properties of that kind and pay cash. She directed me to attend to it at once and, if possible, sell it that day. Emma Taylor came into the office while she was there, I think; if not while she was there, then shortly afterward, and I spoke to her about it. She went immediately to see the property and she said she would take it.

Q. What did Mrs. Ackerman say she would take for the property?

A. Three hundred dollars. She never mentioned five hundred dollars to me as she has testified. I never heard of that. The sale was consummated, a short delay was had in order to examine the title, and the money was paid to Mrs. Ackerman during the month of April, 1882, by my check.

Q. Will you look at that paper and state whether it is the check or not?

A. This is the check, dated April 28, 1882, for $300, drawn on the Central National Bank of Washington, D. C., and indorsed by Mrs. Ackerman.

Q. That is her signature on the back?

A. That is her signature made in my presence.

Mr. HENKLE: I here give that check in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 4.)

Q. Did she get the whole of that money?

A. No, sir. It is my impression that there was just enough taken out to pay the tax bills gotten from the tax office on that day. I charged her no commission. She seemed to be exceedingly anxious for money and all she could get. I understood at the time that she went up to pay it to Mr. Moulton for services in litigation in which she was involved.

772 Q. What is this paper which I now hand you?

A. It is a letter which Mrs. Ackerman wrote in my office. It is not dated, but it is marked, "Monday morning," and is addressed to me, saying, "I have just come from my lawyer's, Mr. Moulton, and he requested that I stop and ask you to please bring over the bill of sale of that small house at 3 o'clock this afternoon." That was a notice which she left for me, requesting me to present myself before the examiner in the litigation in which she was then involved, and the testimony was to the effect that she had sold the property, just as I have stated here. I think I testified in that case that she received from one hundred and seventy-five dollars to two hundred dollars or something like that. I have no distinct recollection now what the tax bill was, but my best recollection is that it amounted to one hundred dollars.

Q. What did she testify she had received?

A. I think she testified that she received $175. She either testified to that amount or it was so stated in her bill. I remember that $175 was the sum mentioned.

Mr. HENKLE: I here give that letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 5.)

WITNESS: These papers have remained in the envelope since the time I gave my testimony in that case, and that is the reason I have them together now.

Q. Well, what is the paper I now hand you?

A. This is a check on Riggs & Co. of the same date as the other check, April 28, 1882, payable to Mrs. A. M. Ackerman, for $26.45, signed by me and endorsed by Mrs. Ackerman in her own handwriting and in my presence, for the rents I collected up to the time of that sale.

Q. Rents you had in your hand at that time?

A. Yes, sir. I expected to be called upon to testify to that in the litigation in which she was involved, in which Mr. Moulton was her attorney, and that is the way I happened to have the checks together.

Q. Did she get that money?

A. Yes, sir.

Mr. HENKLE: I here give that check in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 6.)

Q. You say that she authorized you to sell the property for three hundred dollars?

A. Yes, sir.

Q. When you settled with her and she got the proceeds of what was left after paying the taxes you say that you charged her no commission?

A. No commission at all.

Q. You charged her nothing for your trouble?

773 A. No, sir; I never got any money for the sale at all. She promised to pay me at the time, but never did.

Q. Was she satisfied or dissatisfied?

A. She was quite well satisfied, apparently; she never complained to me at all, except some years afterwards, as she has testified, when I met her coming from an eating saloon on 9th street. I remember that occurrence. She told me then that she wished she had held on to that property, taken my advice, because she could get more for it now. That is the only thing she said to me in the nature of complaint. She has been in my office quite a number of times and never complained to me at all.

Q. That sale was made to Emma Taylor?

A. Yes, sir.

Q. When Mrs. Ackerman authorized you to sell for $300 what did you do; did you communicate with Emma Taylor?

A. I think I offered it to her and somebody else about the same time. Mrs. Ackerman limited me to a time in which to make the sale. Although I have no distinct recollection, I think I offered it to other persons who came in the office that day.

Q. What was the time she limited you to?

A. She wanted me to sell that day. She mentioned the names of other people who would take the property if I could not sell it.

Q. Did you sell it that day?

A. Arrangements were made that day. The money was not paid that day.

Q. Did you send for Emma Taylor or did she happen to come in?

A. No, sir; she came in my office three or four times a week; I think she was in there before Mrs. Ackerman went out, but I am not positive.

Q. Miss Taylor at once agreed to take the property after seeing it?

A. Yes, sir.

Q. Well, did Mrs. Ackerman make a deed to her?

A. Yes, sir.

Q. Is that deed in evidence?

A. I guess not.

Mr. MACKEY: I do not know whether it is or not. It is not disputed that Mrs. Ackerman made a deed to Emma Taylor. The bill alleges that she made a deed.

Mr. HENKLE: Well, I had forgotten, not having read the pleadings for some time.

Q. What did Emma Taylor do with the property?

A. She bought it in 1882, and in 1884, I think—yes, 1884—she then sold the property with other properties to my sister, Martha McIntire. She was then engaged in some speculation, or about to be engaged in some, and wanted money. She offered two or three small houses she had for $600 apiece.

Q. What other properties were they?

774 A. This Ackerman property, No. 408 11th street southeast, and the Eller property, at the corner of 1st and Q streets.

Mr. MACKEY: And then the Barbara Brown property?

WITNESS: There was another property embraced in the same deed, but not paid for at that time; that is what is known as the Barbara Brown property, which was really purchased two years before that.

Mr. MACKEY: Well, it also embraced the Barbara Brown property.

WITNESS: Mr. Mackey often disconcerts me by laughing in my face. You have attempted to insult me several times during the progress of these suits. I suppose it is for the purpose of disconcerting me..

Mr. MACKEY: We have had enough of this. Let it stop.

Q. Who conducted the negotiations between your sister Martha and Emma Taylor?

A. All the real-estate transactions of Martha McIntire I attended to myself.

Q. Did you pay for the property?

A. It was paid for by money given to me by my sister Martha.

Q. Had you any interest in the money?

A. None whatever.

Q. Or money interest in the property?

A. None in the least. She has received the rents from the time she received the deed of the property; I allude to my sister Martha. I have not any interest in it; even the commission which I ordinarily get for collection of rents I have given to her, because she is my sister and I was helping her in every way I could.

Q. You have no interest in the property?

A. No, sir; not the slightest.

Q. And had not at that time of the sale?

A. No, sir.

Q. I hand you a paper which purports to be a deed bearing date September 6, 1884, between Anna M. Ackerman, of the city of Washington, and Martha McIntire, of the same place. Will you please look at that paper and state what it means?

A. This is a quitclaim deed obtained from Anna M. Ackerman at the time of the purchase by Martha McIntire of the property known as the Ackerman property. It was obtained from her for the purpose of enabling Martha McIntire to collect from the city, if such could be collected, claims for damages or drawbacks by reason of special improvements. This house was located on a street which was cut down apparently some twelve or fifteen feet, leaving the house up on a high hill.

Q. What was the consideration for this quitclaim deed?
A. Five dollars, which was paid.
Q. In cash?
A. Yes, sir; this deed was signed in my presence.
Q. You saw Mrs. Ackerman sign that deed and it was delivered to you?
775 A. Well, yes; it was handed to me to be turned over to my sister.
Q. Why was that deed not recorded?
A. That was one of the deeds handed to my sister, Martha McIntire, and she put it with her other papers.
Mr. BOARMAN: It never has been recorded.
Mr. HENKLE: It never has been recorded.
Mr. MACKEY: This is the first time we have seen this deed.
WITNESS: No, sir; it was identified by Mrs. Ackerman when she was on the stand and marked for identification.
Q. Why was that deed not recorded?
A. I cannot say. I was astonished when I saw the number of deeds that were not recorded. I very seldom took deeds to be recorded. I left that to some one in my office. I gave the deeds to my sister, Martha McIntire, supposing that she would record them.
Q. What was your sister's habit with regard to the disposition of deeds which she received?
A. Well, as far as I know, she took charge of them. I know that there was a package in my safe of papers belonging to her, but what that package contained I could not tell; I never examined it; they were valuable; one thing I know was an insurance policy.
Q. These several unrecorded deeds which have been offered in these cases as the testimony has progressed, where did you procure them?
A. When these suits were first instituted I saw my sister Martha and asked her what papers she had in the matter, and she went to the safe-deposit company and withdrew all the papers she had, and at one time at her residence I looked over them and she gave them to me to show you.
Q. Were you aware, when you discovered these deeds until she handed them over to you, that they had not been recorded?
A. No, sir. I might have known it for a day or so, but I did not know that the deeds had been kept that length of time from record. I thought she knew more about that matter than she seems to know, because she attended to matters of recording for me in Philadelphia.
Q. Were they withheld from the record by your advice or for any purpose of your own?
A. Not at all.
Q. Or for any purpose of hers?
A. No, sir; I think it is just as she has testified, owing to carelessness and ignorance on her part.
Q. When Mrs. Ackerman offered to sell this property did you see her husband?
A. Yes, sir. I went to see her husband, who was then engaged

in the War Department, and requested him to buy it, and when I found the amount of taxes on the property I requested him to settle the taxes, so that she could receive more on the property; but he declined to either purchase the property or pay the taxes, and he told me that she had offered the property to Mr. Blumer for $200, and said, Let her sell it.

Q. Why did you not at once offer this property, if you
776 thought the price was low, to one of your sisters, who was buying?

A. Well, they were located in Philadelphia and had no idea then, I do not think, of moving to Washington. They, at my suggestion, put their money in notes instead of real estate, as I thought it would pay them better. I thought it a better way for them to manage for themselves, if anything happened to me—that is, better for them to put their money into notes than into real estate.

Q. She told you, you have said, that Mr. Bieber would buy it?

A. Yes, sir.

Q. Did you have any conference with Mr. Bieber in her presence about it?

A. I think, as she stated, she came into my office after she had concluded to sell the property, and after it had been sold, with Mr. Bieber and said something to this effect: "Mr. McIntire, Mr. Bieber will buy that property." I replied, "Mrs. Ackerman, you have already sold it." That is about all I remember in regard to that. I do not think anything more was said. She had told me personally, however, that Mr. Bieber would give $300 for it.

Q. Did Mr. Bieber in your presence say anything about what he would give for it?

A. I do not think he said anything to me at all about it or to her in my presence.

Q. What, if anything, did she say to you about anybody else having offered $300 for it?

A. She gave me the name of a man who offered her $300 for it—Mr. Wood, I think. I do not remember his first name.

Q. You say that she never said anything about $500?

A. I never heard the sum mentioned in connection with the property at all until she mentioned it on the stand. She requested me to sell the property. I never went to see her about it. I never wrote to her to come to me to sell it. She wrote to me about selling it and to sell it at once.

Q. How did Miss Taylor pay you for the property?

A. She paid me by some stocks—bonds, I think they were. To the best of my recollection, they were United States bonds or something, which I sold at Riggs & Co.

Q. For what?

A. They amounted to the purchase-money, $300. I think they did not sell for quite enough.

Q. And then you settled with Mrs. Ackerman with your check?

A. Yes, sir.

Q. Did you draw the money on the check or did she?

A. I am not clear upon that point whether I went with Mrs.

Ackerman to draw the money from the bank or whether she went herself or whether I cashed it. From the fact of my name appearing below hers on the back of the check, it looks as if I either went to the bank with her or cashed the check, but the money, however, was brought to my office, and then when the tax bills were
777 shown the money was taken out of that $300 to pay the taxes, and the taxes were paid by one of my clerks.

Q. You tried, you say, to get her husband to pay these taxes?

A. Yes, sir; I went to see him. He was then a clerk in the War Department. I think the bulk of the taxes was for special improvements. I thought he ought to pay it, because the taxes accrued during his holding of the property, but he positively declined to advance anything or do anything.

Q. What has your sister done with the property since it came into her possession?

A. She has collected the rents, or, at least, I have collected them and turned them over to her. She has paid the taxes or I have paid them for her. She has received all the rents from the property and paid all the expenses of the property. She has put a new roof on the house, introduced water, painted the house, and done quite a number of improvements on the property since she has had it. The property is still occupied by colored people, as it was then. I think at the present moment it is vacant, but it has always been occupied by colored people.

Q. What was the condition of the house at the time you sold it?

A. The property was run down very much. The front steps, which are about 12 or 15 feet high, were very much dilapidated, so that they had to be replaced by a new porch or new steps. The house was occupied by separate negro families in every room, and it looked as such property naturally would look with such families in every room.

Q. What was the width of the house?

A. The lot is 17 feet front, including an alley of four feet, making the house 13. The front door opens into the front room, with no hall. It is not wide enough for a hall, and the rooms are shallow, there being only four rooms.

Q. Did you say anything to induce her to sell at the price of $300?

A. No, sir; on the contrary, I advised not to sell at once; that if she left the property in my hands and let me advertise it I could get a better figure for it, having time to do so, but she objected and wanted the sale made at once so that she could use the cash for some immediate business. I think it was for some litigation in which she was then involved. I remember speaking to Mr. Moulton, her attorney, about the matter, and I know that he was aware of the fact that she was selling the property and why she sold it.

Q. Mrs. Ackerman says on page 8 of her testimony that years afterwards she ascertained that the tenant Holmes would have bought the property for $600. Do you know anything about that?

A. I only know what Mr. Holmes has told me; that she spoke to

his wife about purchasing the property, but not to him. Holmes is a colored man, driver of a coal cart. He has a family of seven or eight children, and I do not think the oldest one is more than eight years of age. He told me that he received but $6 a
778 week wages. He repeatedly told me that, and I know he had no money to buy the property.

Mr. MACKEY: All this testimony as to what the witness was told by Mr. Holmes is plainly inadmissible and is objected to.

Q. Mrs. Ackerman says on page 11 of her testimony that you did not show her your account of the sale and expenses. What do you say to that?

A. Well, if I did not show her an account made out in regular shape I showed her the tax bills, the only thing I had to make out the bill for, and she admits the tax bills were paid. If she does not admit it in this suit she did in the other suit. I am under the impression that I made out an account and rendered her a copy. However, if there was only one item to be taken from the purchase-money, it is just possible that I did not make out an account. I know that I did not charge her any commission. She promised to pay me a commission, but never did.

Q. So you received nothing for the sale?

A. Not a penny.

Q. What, if anything, did she ever say to you about wishing that she had taken your advice and not being in a hurry to sell the property?

A. As I said awhile ago, at the time she alludes to in her testimony I remember meeting her in front of an eating saloon now known as the Vatoldi, on 9th street, one Sunday several years ago, and she said to me then that she would have been better off if she had taken my advice and held onto the property because it was worth more at the time she was speaking than when it was sold; but she made no complaint even then.

Mr. HENKLE: Have you anything more to say, Mr. McIntire?

WITNESS: In answer to the interrogatories of the bill I think I made an error in regard to the question about when Emma Taylor had been seen. I wrote the answer myself. I confounded what my sister Emma had told me with what my sister Martha had told me. I stated that my sister Martha had met Emma Taylor three or four times, one time in Philadelphia; whereas my sister Emma had told me that. My sister Martha had not met her that number of times.

(Adjourned.)

MAY 1, 1893—Monday, 3 o'clock p. m.

Met pursuant to agreement.

Appearances: Messrs. F. H. Mackey and W. W. Boarman, solicitors for the complainant; also the examiner, and also S. S. Henkle, Esq., solicitor for the defendant.

779 EDWIN A. MCINTIRE, who further deposes and says, being recalled for—

Cross-examination.

By Mr. MACKEY:

Q. You state on page 64 of your testimony in this Ackerman case that Emma Taylor bought this property in 1882, and in 1884 sold the property, with other properties, to your sister, Martha McIntire; that she, Emma Taylor, was engaged in some speculation or about to be engaged in some and wanted money, and that was the reason why she offered these houses for sale. What speculation was it that Emma Taylor was then engaged in or about to be engaged in?

A. I could not say definitely what it was. I have forgotten.

Q. Well, can you say indefinitely?

A. I could not tell what it was exactly.

Q. Can you tell anything at all about it?

A. No, sir; I can only guess at it.

Q. Have you any recollection whatever as to that matter?

A. No distinct recollection.

Q. Well, have you any indistinct recollection?

A. What I mean by saying that I have no distinct recollection is that I have no positive recollection. I could guess at it, because I have an idea of what it was.

Q. I am not asking you to guess at it. I asked you whether you have any recollection, distinct or indistinct, about it.

A. No, sir; I could not state positively of my own knowledge what it was.

Q. I ask you whether you have any recollection about it.

A. Perhaps you had better suggest the answer you want.

Q. I do not ask what your recollection is. I ask you whether you have any recollection about it.

Mr. HENKLE: He says that he has no distinct recollection about it.

A. I have no positive knowledge. I do not know of my own knowledge about it. I have heard what it was. I do not wish to evade your questions.

Q. From whom did you hear it?

A. That I could not tell.

Q. What was it you did hear?

A. I heard that she was speculating in some stocks.

Q. But from whom you heard it you do not know.

A. No, sir; I cannot tell pos-tively.

Q. That is what you mean when you say that she was engaged in some speculation?

A. Yes, sir; I understood that she was speculating in mining stocks; Kit Carson mining stock was the stock she was interested in.

Q. Now, you say on page 65 of your testimony that this property

was paid for by money given to you by your sister Martha
780 meaning by that, I suppose, that you paid Emma Taylor money given to you by your sister Martha. How was that money given to you by your sister Martha?

A. I have no distinct recollection. She has paid me a number of times various sums, sometimes by check and sometimes in cash. I do not remember how that was in this particular transaction.

Q. When you paid her this money did you pay the whole eighteen hundred dollars down in cash?

A. No, sir.

Q. How did you pay it?

A. She was not paid eighteen hundred dollars. She was paid twelve hundred dollars.

Q. Was that paid in cash?

A. To the best of my recollection it was. She may have been paid in checks. I do not know.

Q. Have you any checks of yours showing that you paid her the money?

A. I do not know whether I have or not.

Mr. MACKEY: You have produced a great many papers in this transaction. I would be glad if you would look and see whether you have a check for twelve hundred dollars or for any sum paid to Emma Taylor and produce it at the next session.

Q. Did you pay her any cash outside of a check or checks?

A. I told you that I could not recollect how I paid her—whether in cash or by check.

Q. Have you any receipt from her showing that you paid her this money?

A. I do not know. I would not ordinarily take a receipt, as the deed would be a receipt. I have had a great many transactions in which checks have passed, and it is almost a matter of impossibility for me to find any particular check; and, as I told you before, some of my check books have been destroyed.

Q. You found checks given to Annie Ackerman?

A. Yes, sir; and I told you how I found those. I probably would not have had those if I had not put them away in another case. I have several thousand checks not indexed, and it is impossible for me to find them.

Q. I ask you, after this long statement, to answer categorically the question whether you have any check, receipt, or memoranda of any sort or kind whatsoever to show that you paid to Emma Taylor any money as the purchase-money of this property received by you from your sister, Martha McIntire.

A. I have answered you before that I have no knowledge of any, and I do not remember, in my experience as a real-estate broker, taking any receipt when a deed was given.

Q. Have you any memorandum, receipt, or check, or anything of that nature which will show that your sister Martha paid you any money or check or other valuable thing to pay Emma Taylor for this property?

WITNESS: For this particular property?

Mr. MACKEY: Yes.

781 A. I do not know whether I have or not. I may or may not have.

Mr. MACKEY: Well, if you have I will thank you to produce them.

Q. In whose handwriting is this quitclaim deed of the sixth of September, 1884, which you have offered in evidence here as Exhibit A. H. No. 7?

A. In mine.

Q. Is the written part in the acknowledgment also in your handwriting?

A. I suppose so. Let me look at it and I will see. (After examining deed:) Yes, sir; it is in my handwriting.

Q. Is the date filled in there in your handwriting?

A. Yes, sir.

Q. Are the words "justice of the peace" under Mr. Helmick's signature in your handwriting?

A. I am not certain whether they are or not.

Q. Well, was that done by Justice Helmick?

A. I am not certain. I do not recognize it as my handwriting.

Q. Do you recognize it as Justice Helmick's handwriting?

A. I do not know whose it is.

Q. After you got the deed from Emma Taylor to your sister of this property I understand you to say that you desired to get a quitclaim from Annie Ackerman, so that you could recover whatever drawbacks were upon the property.

A. Yes, sir; I said about the same time.

Q. Had you examined to see whether there were any drawbacks due or not?

A. I could not tell except by the clerks in the office.

Q. You made no inquiry about it?

A. I made a general inquiry of other property.

Q. Emma Taylor executed a deed to your sister, and then did you send for Annie Ackerman to get this quitclaim deed?

A. I never sent for her.

Q. How did you get this quitclaim deed from her?

A. She must have been in the office, unless Justice Helmick did it for me. I have forgotten now. He may have taken and gotten it for me as — had done in several cases for me.

Q. Do you remember how long afterwards it was, after you got the deed from Emma Taylor to your sister, that you got this quitclaim deed?

A. About the same time, I think.

Q. By the same time you may mean a century or an hour.

A. I never thought that "same time" meant a century.

Mr. MACKEY: I am asking for your recollection.

WITNESS: Do not talk to me that way. I am a gentleman and

you must treat me as such. I cannot remember exactly the time, but it was about the same time, within a few days.

Q. I understand, then, that you mean that you got it within a few days after the execution of the deed from Emma Taylor to your sister?

782 A. To the best of my recollection.

Q. Have you any recollection of the circumstance of getting this quitclaim deed at all from Annie Ackerman?

A. I have no distinct recollection. It is my impression that I gave it to Justice Helmick to get it for me. I remember I gave him a number to get for me at one time. I could tell by refreshing my memory in regard to some cases I have. I could not tell without referring to them.

Q. But now, at this moment, you have no recollection whatever of the circumstance of getting this quitclaim deed from Annie Ackerman?

A. Yes, sir; I say that I am under the impression that I gave it to Justice Helmick to get for me with some others.

Q. Is that your recollection or simply an idea you formed in regard to it?

A. That is my best recollection.

Q. How, then, do you know that you paid her five dollars for it?

A. Because I paid it to him for her.

Q. You gave him five dollars to pay her?

A. Yes, sir.

Q. That you remember?

A. Yes, sir.

Q. When did Justice Helmick deliver you this deed?

A. About the time of its execution.

Q. Did you have any talk with him about it?

A. I do not recollect of any.

Q. Do you remember telling him to send for Annie Ackerman and get this quitclaim deed from her?

A. No, sir; I do not remember giving him any instructions. He would know just what to do.

A. Did he know where Annie Ackerman was?

A. I presume so. I think he knew her. I am pretty certain he did. She lived not very far from his office.

Q. You told him to send for her and get this deed and to pay her this five dollars?

A. I do not know what instructions I gave him particularly, but I asked him to get her signature and acknowledgment.

Q. And then he brought it back to you?

A. Yes, sir.

Q. Why did you not put it on record?

A. Well, I turned it over to my sister.

Q. Did you turn it over immediately to your sister?

A. With the other deeds. The first I knew that it was not recorded was when she turned the papers over to me at the beginning of these suits.

Q. I asked you if you turned it over to her immediately after you got it from him.

A. Possibly not immediately. I may not have seen her immediately. I turned it over to her in a short period after I received it.

Q. Was that in a day or two or three or four days?

783 A. It might be a day. Sometimes I would not see her for a week and sometimes I would see her every day.

Q. Did you ever give her any directions or advise her that she ought to record these deeds?

A. I presumed that every one was recorded. I had no idea that they were off the record until these suits began. I thought she knew that a deed ought to be recorded. I do not remember giving any specific directions.

Q. When was the pencil-mark, "To be recorded," which is on the top corner of the deed, placed there?

A. That was, I presume, put on when I filed it among the papers in my office to be recorded. I mark papers for my clerk to take to the office.

Q. Was this deed marked in this way when you gave it to your sister Martha?

A. To the best of my recollection it was; that indicates that it went into the files in my office to be recorded.

Q. And she received the deed with this pencil-mark on it?

A. Yes, sir.

Q. Did you get any drawbacks upon this property?

A. I never received any on any property. This was not specially for drawbacks; it was for damages. I said drawbacks, but I meant damages from the city government for cutting down the streets.

Q. You never got any damages?

A. No, sir; not on this property.

Q. Nor drawbacks?

A. No, sir.

Q. Did you make any application?

A. I did not mean drawbacks. It was for mistakes of calculation in the tax office.

Q. After this property was conveyed to Emma Taylor by Annie Ackerman, in the manner as stated by you, who paid the taxes until it was conveyed to your sister?

A. I have no recollection.

Q. Did you say that you did not pay them?

A. No, sir; I may have paid them, but I do not recollect.

Q. If you paid them, for whom did you pay them?

A. For the owner, whoever it might be.

Q. Was not Emma Taylor the owner then?

A. I do not know whether she was the owner all that time or not.

Q. If you paid the taxes for Emma Taylor from the time she bought from Annie Ackerman until she sold it to your sister Martha, would you not have some data in writing showing that you paid those taxes?

A. Very likely I might.
Q. Have you any such data?
A. I could not tell you whether I have or not.

Mr. MACKEY: Well, if you have such data I will be glad if you will produce it at the next session. I will call upon you to produce it.

784 Q. Did you not record the deed which you say was made by Annie Ackerman to Emma Taylor?
WITNESS: Did I record it?
Mr. MACKEY: Yes.
A. I have no recollection.
Q. Did you not get that deed off the record?
A. I think not. It is very seldom that I get any deed off the record. I most always send some one to the office. It might have been gotten in my name.
Q. If you got the deed it must have been because you had the receipt?
A. I do not remember of getting it. It was my custom to send some one in the office for deeds. There was an order box there in my office, and if any one from my office got a deed off the record it was by my direction and, possibly, charged to me.
Q. The person you sent could not get the deed without the receipt?
A. I think so, where they are known in the record office.
Q. Suppose the record is marked "Receipt returned"?
A. That is no evidence at all.
Q. I am not asking you whether it is evidence or not. Do you say that you did not return any receipt to the record office for this deed?
A. No, sir; I do not say that. I have no recollection at all of doing it.
Q. You say that the repairs were made to the Ackerman property, such as putting on a new roof, painting, etc. Who made those repairs?
A. I could not tell from memory.
Q. I do not mean what carpenter or painter; I mean whether your sister Martha had them done.
A. Oh, she had them made at her expense.
Q. Did Emma Taylor make any repairs on the property while she had it?
A. Not that I know of.
Q. You did not make any for her?
A. No, sir.
Q. Nor cause any to be made for her?
A. No, sir; not that I can call to mind now. I have no recollection of having any work done at all for her at any place.
Q. Who collected the rents of this property during the interval between the alleged conveyance by Annie Ackerman to Emma Taylor and the conveyance by Emma Taylor to your sister?
A. I do not recollect now.

Q. Did you collect them?

A. I do not recollect, I say.

Q. Have you any memoranda at your office to show whether or not you collected the rents?

A. No, sir; I have no memoranda back of 1885——

Q. (Interposing.) You have produced memoranda here in
785 the Haynes case, in the Southey case, in the Ackerman case, and, I believe, in the Brown case back of 1885.

A. Yes; you would not let me finish my answer. I have no memoranda back of 1885 of rent accounts.

Q. That is to say, that you have no memoranda of any sort throwing any light upon your dealings with Emma Taylor?

A. No; that means back of 1885. My ledger is destroyed. I have no record of dealings with anybody back of that time.

Q. Have you any receipts, letters, or checks?

A. I suppose I have several thousand papers in my cellar which it is a matter of impossibility for me to go over; some time I hope to get them fixed. There may be among them some such paper. I have worked upon them at times, but my health has been so poor that I could not work much on them.

Q. Look at this check (Exhibit A. H. No. 4) for three hundred dollars and payable to Annie Ackerman. Your endorsement is immediately under that of Mrs. Ackerman?

A. Yes, sir.

Q. How did that come to be put there?

A. Well, it was put there to guarantee her signature at the bank.

Q. Who collected the money on the check?

A. It is not marked as the banks mark them. I cannot tell positively.

Q. Is that the way you guarantee a signature?

A. Yes, sir.

Q. If you had drawn that check to the order of Annie Ackerman and you wanted to get the money on it, would not the bank have required you to put your name at the bottom?

A. Yes, sir.

Q. Was not that the case here?

A. No, sir.

Q. Did not Annie Ackerman draw that money?

A. I have no distinct recollection whether she went to the bank alone or whether she went with me or whether I sent one of the clerks of the office with her.

Q. Did Annie Ackerman get the whole of that three hundred dollars in her hands?

A. Yes, sir.

Q. And she paid you the difference?

A. The amount of taxes. That was all deducted from this check.

Q. Now, then, I understand you to say that Annie Ackerman went to the bank with somebody?

A. No, sir; you do not understand me as saying that.

Q. Let us know what you do say.

A. I refer to my former answer.

Q. Well, whoever went with her, this money was paid to her by the paying teller?

A. How could I tell that if I did not go with her? I told you that I had no distinct recollection about it.

Q. Who came back with the money to your office?

786 A. If I went with her or knew who, if anybody, went with her, I could tell you.

Q. Did she come back to your office?

A. If I knew that she went I could tell.

Q. You do not remember anything about the transaction?

A. I remember the money being at my office and I remember her counting the bills. I remember her being under the impression that the whole of the three hundred dollars should come to her, and I remember her objecting to paying the taxes.

Q. But how she got that money you don't remember?

A. No, sir; not distinctly. Those things are done in so many legitimate ways that I do not remember how it was done in this case.

Q. Look at this check (Exhibit A. H. No. 6) and state whether that check was sent at the same time with her.

A. It was on a different bank, in a different section of the city, and not naturally the same time; it is very natural that I cashed that check. It was my custom to often cash checks for rents from money in my office.

Q. Was not that the way you did the three-hundred-dollar check (Exhibit A. H. No. 4)—that is, cash it yourself?

A. It might have been. I do not know.

Q. Why are those signatures scratched out on one and not on the other?

A. I did that the other day. I was going to scratch them both out.

Q. Did you take a receipt from Annie Ackerman for this twenty-six dollars for rents?

A. No, sir; the check was a receipt.

Q. Does that state on its face what it was for?

A. No, sir; my book would show what it was for.

WITNESS: If that covers the date, I have not the book now. What is the date of that check?

Mr. MACKEY: 1882.

Q. I thought you said that the book prior to 1882 was burned?

A. I said that if it was after that.

Q. You have nothing to show what that was for, although you paid the three hundred dollars on the same day?

A. I know it was for rents because I kept nothing but rent accounts in Riggs' bank. I know that a check on Riggs' bank means rents.

Q. You have nothing to show that it was for rents?

A. No, sir; I never took any receipt from anybody I had dealings with except the checks.

EDWIN A. McINTIRE.

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(Adjourned.)

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Frederick Blumer.

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Direct examination.

By Mr. MENKLE:

Q. Please state your name, occupation, and residence.

A. Frederick Blumer; I am a guard at the Washington asylum, and I reside at No. 821 C street southeast, in this city.

Q. Did you know Mrs. Annie Ackerman, the complainant in this case?

A. Yes, sir.

Q. How long have you known her?

A. Well, I have known her for about fourteen years, or, maybe, fifteen years.

Q. Did you know her property and where it was situated?

A. Yes, sir; at the corner of 11th and E streets southeast; they lived there for a little while, I think.

Q. What kind of property is it?

A. Well, it sets up pretty high; I suppose about twelve feet, I guess, above the grade, at least. It has been dug down there considerably; I judge 12 feet.

Q. How long has it been set up that way above the grade?

A. I guess at least twelve or thirteen years; twelve years, anyhow.

Q. Did you have any conversation at any time with Mrs. Ackerman with regard to the sale of that house; and, if so, when and where was it and what took place?

Mr. MACKEY: Objected to on the ground that it is irrelevant to the issues raised in this case.

A. Well, I met Mrs. Ackerman in the grocery store of L. A. Wood's (which is now kept by his sons), at the corner of 9th and E streets southeast, and she offered me that property for three or four hundred dollars. I was there at the time—that is, I was a clerk there for a long time before I went into business for myself.

Q. She offered to sell it to you for three or four hundred dollars?

A. Yes, sir.

Q. You do not remember which—whether three hundred dollars or four hundred dollars?

A. Well, it was somewheres along there. If she could not get four hundred dollars, I supposed that she would take three hundred dollars. I did not talk much about it. I did not know whether she wanted to sell it or not.

Q. Did you learn afterwards whether she sold it or not?

A. No, sir; I did not have anything more to say to her.

Q. What was the property she offered to sell you?

A. Her house and lot at the corner of 11th and E streets southeast, in this city.

788 Q. Did she ever live there?
A. Well, I think they did live there for a while.
Q. When did you say that was?
A. I guess it was twelve years ago. I could not give the date.
Q. Well, she owned the property at the time?
A. Yes, sir; so far as I know, she did.
Q. Was she having any litigation with her husband at the time?

Mr. MACKEY: Objected to.

A. Yes, sir.
Q. And it was before that litigation was closed?
A. Yes, sir.
Q. You did not know whether she afterwards sold the property for three hundred dollars?

Mr. MACKEY: Objected to as leading.

A. I could not say.

FREDERICK BLUMER.

Subscribed and sworn to before me this 12th day of May, 1893.
ALBERT HARPER, *Examiner.*

(Adjourned.)

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Testimony in Rebuttal.

AUGUST 10, 1893.

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John Holmes.

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Direct examination.

By Mr. MACKEY:

Q. Where do you live and what is your business?
A. I live at No. 647 Navy place, between 6th and 7th streets southeast, on the Navy Yard, and I work in the wood and coal yard of B. L. Simpson, on Pennsylvania avenue southeast.
Q. Did you ever live at No. 408 11th street southeast, in this city?
A. I did.
Q. Do you know Mrs. Annie Ackerman?
A. I do not know the lady no more than I have seen her passing.
Q. How long did you live in that house?
A. Well, I think—my recollection—I think it was very near eleven years; I think not shorter than that.
Q. When did you leave there?
A. Well, it has been somewhere in the neighborhood of four years—four and a half or four years since I left there.
Q. Up to the time that you left there, about four years ago, you were there, you say, eleven years constantly?

789 A. As near as my memory will serve me, I think it was very near eleven years.

Q. From 1882 to 1884 to whom did you pay the rent?

A. Well, I do not know exactly whether it was in the time that Mr. McIntire had it in hand or not.

Q. Did you ever pay rent to Mr. McIntire?

A. Yes, sir; I have.

Q. Whom else did you pay rent to?

A. Well, before Mr. McIntire took it, I do not know the gentleman's name; I do not recollect the gentleman. I never paid that gentleman, because I was not in the city; I was in Baltimore.

Q. Do you remember about when you commenced to pay rent to Mr. McIntire?

A. Well, I cannot recollect the date.

Q. Have you any way of fixing about the date?

A. No, sir; because I cannot recollect it, as it has been so long ago.

Q. Do you know for how many years you paid the rent to Mr. McIntire?

A. I could not say. I was there in the neighborhood of eleven years.

Q. How much of that eleven years did you pay Mr. McIntire the rent?

A. Well, I think the other parties, if I am not mistaken—I do not think we paid to anybody else any more than about two and a half years or something like that, and it may not be that much.

Q. You do not think you paid rent to other parties more than two and a half years?

A. I doubt whether it was as long as that, but I cannot say positively.

Q. After that you paid the rent to Mr. McIntire, and paid him right along until you left?

A. Yes, sir.

Q. Did you ever pay anybody else besides Mr. McIntire after you commenced paying him the rent?

A. No, sir. Of course, his clerk came there, and I supposed he was authorized from him to come.

Q. Do you know who owned the house before you commenced paying the rent to Mr. McIntire?

A. I did not rent the house myself, but, of course, my wife did. I was not in the city then. My wife went to Mrs. Wright, and Mrs. Wright interceded with Mrs. Ackerman for the house for her. I never saw the lady but twice in my life.

Q. Did Mrs. Wright collect the rent at one time?

A. My wife did pay Mrs. Wright when she first went into the house——

Mr. HENKLE (interposing): I object to what Mrs. Holmes said as hearsay.

Q. Do you know that your wife paid the rent to Mrs. Wright?

790 A. I know that to be the fact. I was in the city at the time, but I would not go and see about the house.

Cross-examination.

By Mr. HENKLE:

Q. Do you remember what year you went there?
A. I cannot recollect now. I cannot read nor write. I only go by my mother wit.
Q. You do not remember in what year you went there?
A. I do not, sir. Only I always thought it very proper to get receipts for my rent whenever I pay my rent.
Q. You do not remember when you left there, and you do not remember what year you went there?
A. I cannot tell exactly, because I have not the receipts. I have all the receipts at home.

Redirect examination.

By Mr. MACKEY:

Q. Do you mean that you have the receipts from Mr. McIntire?
A. No, sir; I have not those. My wife destroyed them.
Q. You have the receipts from your present landlord?
A. Yes, sir.
Q. Did Mr. McIntire tell you who was the owner of the house?
A. No, sir; I never seen the owner of it at all. I went to Mr. McIntire's several times to ask him to fix the house up for me. Some time ago I got back in my rent, and he said that the owner would not let him fix the house.
Q. Did he tell you who the owner was?
A. No, sir. I asked him several times, and he said some parties.
Q. Did he tell you where the parties lived?
A. Either in Philadelphia or New York; I disremember which.

his
JOHN x HOLMES.
mark.

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William F. MacLennan.

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Direct examination.

By Mr. MACKEY:

Q. I believe you have testified before in one of these cases as an expert concerning certain signatures.
A. Yes, sir.
Q. I will ask you to look at this deed (Exhibit A. H. No. 7 in the case of Ackerman *vs.* McIntire), being a quitclaim deed from Annie M. Ackerman to Martha McIntire, or purporting to be such, and state whether you have ever seen it before.
A. Yes, sir; I have examined this deed before.

791 Q. Have you made a comparison of the signature "Annie M. Ackerman" there on said Exhibit A. H. No. 7 with these signatures "A. M. Ackerman" on the back of these two checks (Exhibits A. H. Nos. 4 and 6 in this Ackerman case), being two checks purporting to have been drawn by E. A. McIntire to the order of A. M. Ackerman and both dated April 28, 1882; also with the signatures "A. M. Ackerman" on this paper (Exhibit A. H. No. 5 in this Ackerman case), being a letter written in pencil on the letter sheet of Edwin A. McIntire; also with the signature "A. M. Ackerman" on the paper (Exhibit A. H. No. 3 in this Ackerman case), being a letter dated Camden, New Jersey, February 3, 1882; also with the signature "A. M. Ackerman" on a paper (Exhibit A. H. No. 1 in this Ackerman case), being a letter dated Camden, New Jersey, January 29, 1882, and also with the initials "A. M. A." on a postal card (Exhibit A. H. No. 2 in this Ackerman case) dated Philadelphia, April 6, 1882?

A. Yes, sir; I have compared the signature "Annie M. Ackerman" on this Exhibit A. H. No. 7 in the Ackerman case with all these signatures.

Q. I will ask you after making that comparison what is your opinion as to the same person having written the signature to that deed (Exhibit A. H. No. ~ in the Ackerman case) who wrote the signatures to those various papers which I have handed you—that is to say, if the signatures to those various letters and papers are genuine, whether the signature to that deed is, in your opinion, a genuine signature or not.

Mr. HENKLE: I object to that form of the question. I suppose what you want to get at is whether they are all written by the same hand.

Mr. MACKEY: That is what the question amounts to.

Mr. HENKLE: Are these other papers in evidence?

Mr. MACKEY: Why, certainly, and admitted to be genuine.

A. The signature to this deed (Exhibit A. H. No. 7 in this Ackerman case) does not appear to me to be in the same hand as the signatures to the document submitted.

Q. Does not appear to be in the same handwriting. Does it appear to you to be written by a different person?

A. It has that appearance to me.

Q. In your opinion, is it written by the same party or not?

A. I have answered that it does not appear to me to have been written by the same person.

Q. I hand you the following deeds, to wit, a deed from Emma Taylor to Martha McIntire, dated September 6, 1884 (Exhibit A. H. No. 2 in Brown *vs.* McIntire); a deed from Barbara Brown *et al.* to Emma Taylor and Martha McIntire, dated April 25, 1881 (Exhibit A. H. No. 1 in Brown *vs.* McIntire); a deed from Emma Taylor to Martha McIntire, dated May 31, 1884 (Exhibit A. H. No. 14 in Pryor *vs.* McIntire), and a deed from Emma Taylor to Alfred Brown, dated May 14, 1883 (Exhibit A. H. No. 12 in Pryor *vs.* McIntire),

and I ask you whether you have made any comparison of
792 the signature "Wm. Helmick" as a witness and to the acknowledgment of the quitclaim deed from Annie M. Ackerman to Martha McIntire (Exhibit A. H. No. 7 in Ackerman *vs.* McIntire) with the said signature "Wm. Helmick," as it appears upon the other deeds which I have just handed you.

A. Yes, sir; I have examined those signatures and made a comparison.

Q. What is your opinion as an expert as to the same person having written the signature "Wm. Helmick" as a witness and to the acknowledgment to this Ackerman quitclaim deed (Exhibit A. H. No. 7) who wrote the said signature "Wm. Helmick," as it appears upon the deeds which I have enumerated and handed to you?

A. I should hesitate some time before accepting the signature "Wm. Helmick" as genuine to this Ackerman quitclaim deed (Exhibit A. H. No. 7). While it has many of the characteristics of the genuine signature, yet I find a tremulousness in the whole signature which is absent in the genuine signature.

Q. What is there about this signature "Wm. Helmick" to the Ackerman quitclaim deed (Exhibit A. H. No. 7) which differentiates it from the signature "Wm. Helmick" to the other deeds?

A. The absence of the bold, free style which characterizes all his genuine signatures.

Q. Do you discover in this deed (Exhibit A. H. No. 7 in Ackerman *vs.* McIntire) anything which you would call a shaky or unsteady hand?

A. Yes, sir; the signature is decidedly shaky and not at all like Mr. Helmick's genuine signature in that respect. It has a similar appearance, of course. It looks like his signature.

Q. All signatures where they are forged must look something like the original?

A. Yes, sir; they have to be necessarily.

Q. The attempt is to make a forged signature look like the original?

A. Yes, sir.

Q. It must necessarily, of course, look like it in some respects?

A. Yes, sir.

Q. But now, in your opinion as an expert, what is your belief as to the signature "Wm. Helmick" to this Ackerman quitclaim deed (Exhibit A. H. No. 7) having been written by Mr. Helmick?

A. If that signature were presented to me as a genuine signature I should not accept it without some proof that it was genuine, although Mr. Helmick may have written that signature on a sick bed or something of that sort; but as it stands I should not accept it as a genuine signature if presented to me in the way of business.

Q. Look at this paper (Exhibit A. H. No. 22 in Hayne *vs.* McIntire), purporting to be a bill of J. T. Coldwell, auctioneer, to E. A. McIntire, trustee, and state what is your opinion in regard to that

bill having been altered or doctored; how much of it, in your
793 opinion, was the original bill, and what has been added to it since, if anything has been.

A. This bill (Exhibit A. H. No. 22 in Hayne *vs.* McIntire) to me has the appearance of having been originally rendered in the amount of $16.50, the figures "$16.50" in the outside column; the figures 17.50, immediately above the figures 16.50, and the figures 10, 17, 22, and the total $83, immediately following the figures 16.50 in the outside column, appear to have been written afterwards; the item "Bellman, 1.00," seems to have been written by the party who originally drew the bill, and these figures 16.50, in the outside column, appear to have been written by the same party who wrote the figures 16.50 at the top of the first column.

Q. You say that the figures 16.50 written in the first column and the figures 16.50, written in the second column, were written by the same person?

A. They have that appearance to me.

Q. State whether the other figures in those columns were written by the same person or by different persons.

A. In my opinion, they were not written by the same person; they are written in a different style and in a different ink.

Q. And how about these lower lines in the body of the bill as compared with the first four lines?

A. I have reference to those lines, too.

Q. You have reference to everything in there except the first three lines and the word "Bellman"?

A. Everything below "Bellman."

Q. Do you observe an erasure on that bill before the figures 16.50 in the outside column?

A. Yes, sir.

Q. Have you any opinion about that?

A. Well, it is hard to tell what was underneath the erasure; you cannot tell ordinarily; but naturally there would have been a dollar-mark there.

Q. And that dollar-mark which was right opposite the figures 16.50 in the outside column has been erased with a knife?

A. If it was there it has been erased.

Mr. HENKLE: Cross-examination waived.

WILLIAM F. MACLENNAN.

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(Adjourned.)

Mr. MACKEY: I here give in evidence certified copy of deed from Annie M. Ackerman to Emma Taylor, dated April 24, 1882, and recorded in Liber 1002, folio 348, of the land records of the District of Columbia.

NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 8.

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794 SEPTEMBER 6, 1893.

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Edwin B. Hay.

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Direct examination.

By Mr. MACKEY:

Q. You are, I believe, a member of the bar of the supreme court of the District of Columbia?

A. Yes, sir.

Q. Have you had any experience in the comparison of handwritings?

A. I have, and have been received and accepted as an expert in handwriting in our courts and elsewhere.

Q. I hand you certain papers which have been filed in this case and marked, respectively, Exhibits A. H. Nos. 1, 3, and 4, and ask you whether you have made any comparison of the signatures to those papers and what you have to say as to those signatures having been written by the same person who wrote the signature to this paper which I now hand you and which is filed as Exhibit A. H. No. 7 in this case.

A. I have examined the handwritings that have been submitted to me in these exhibits and have made a comparison thereof, and from the comparison I have formed the opinion that if the handwritings in the signatures to these papers marked respectively Exhibits A. H. Nos. 1, 3, and 4 are the genuine handwriting of A. M. Ackerman, then the signature to the deed which is marked Exhibit A. H. No. 7 in this case is not in the handwriting of Annie M. Ackerman.

Q. I will ask you also whether you have made any comparison of the signatures of "Wm. Helmick" to the deeds filed and marked respectively Exhibits A. H. Nos. 3, 12, and 14 in the case of Pryor *vs.* McIntire (equity, No. 12761), and also the signature of "Wm. Helmick," filed and marked respectively Exhibits A. H. Nos. 1 and 2 in the case of Brown *vs.* McIntire (equity, No. 13177), with the signature of "Wm. Helmick" to the deed which is marked Exhibit A. H. No. 7 in this case of Ackerman *vs.* McIntire; and, if so, what is your opinion as to the genuineness of the signature of "Wm. Helmick" in the Exhibit A. H. No. 7 in this case of Ackerman *vs.* McIntire, supposing the others to be genuine?

Mr. HENKLE: Assuming the others to be genuine.

Mr. MACKEY: Well, you offered it in evidence as genuine.

A. Assuming all the signatures to be genuine except the one upon the second page of Exhibit No. 1 in the case of Brown *vs.* McIntire (equity, No. 13177) after the signature of Floyd Harleston and above the signature of "Samuel A. Peugh," having made the comparison of the signature of "Wm. Helmick" with the signature of "Wm. Helmick" in the Exhibit A. H. No. 7 in this case, then I have to

say that the signatures of "Wm. Helmick" as subscribing
795 justice of the peace and as witness to the deed Exhibit A. H. No. 7 in this case is not genuine.

Q. Do you know Mr. William F. MacLennan, who is chief of the warrant division in the Treasury Department of the United States?

A. I do and have known him for twenty-five years.

Q. What is his reputation as an expert in the comparison of handwriting?

Mr. HENKLE: Objected to as immaterial, irrelevant, and incompetent.

A. It is considered to be good. He is the expert for the United States Treasury Department, and all matters in the comparison of handwriting are referred to him as the expert of the department.

Q. I will ask you whether you have made a comparison of the signature Emma Taylor as it appears in these deeds, to wit, in the deed from Barbara Brown and Emma Taylor to Martha McIntire, dated April 25, 1881, and filed as Exhibit A. H. No. 1 in the case of Brown *vs.* McIntire, equity, No. 13177; also in the deed from Emma Taylor to Martha McIntire, dated September 6, 1884, and filed as Exhibit A. H. No. 2 in the said case of Brown *vs.* McIntire; also in the deed from Emma Taylor to Alfred Brown, dated May 14, 1883, and filed as Exhibit A. H. No. 12 in Pryor *vs.* McIntire, equity, No. 12761; also as it appears in the deed from Emma Taylor to Martha McIntire, dated May 31, 1884, and filed as Exhibit A. H. No. 14 in the said case of Pryor *vs.* McIntire, and also as it appears in the deed from Emma Taylor to Joseph Forrest, dated December 30, 1882, and filed as Exhibit A. H. No. 14 in the case of McIntire *vs.* McIntire, equity, No. 10715, with the signature of Emma T. McIntire as it appears in the following papers, to wit: In the contract of Medford & Waldron, filed as Exhibit A. H. No. 18 in said case of Pryor *vs.* McIntire; also in the paper purporting to be the petition of Martha McIntire praying that Edwin A. McIntire be appointed administrator *c. t. a.*, and assent of three other heirs thereto, filed in the matter of the estate of David McIntire, deceased, on April 11, 1884, being No. 1532 in the office of the register of wills in the District of Columbia; also as it appears in the paper purporting to be the answer of Martha McIntire, Emma T. McIntire, and Sarah McIntire to the rule to show cause, etc., filed in the matter of said estate on July 31, 1885; also as it appears in the paper purporting to be the petition of Martha, Emma T., and Sarah McIntire for partial distribution, filed in the matter of the said estate on August 5, 1885; also as it appears in the paper purporting to be the petition of Sarah McIntire and others praying the court to allow S. S. Henkle, Esq., att'y, $500 out of funds in the custody of the court belonging to the said estate and order of court directing the register of wills to pay the same, filed in the matter of said estate on March 5, 1886; also as it appears in the paper purporting to be the petition of four legatees that the assets be turned over to the administrator, filed in the matter of said estate on March

13, 1891; also as it appears in the paper purporting to be
796 the renunciation of Emma T. McIntire, one of the executors, filed in the matter of the estate of Adeline McIntire, deceased, on November 20, 1885, being No. 2165 in the office of the register of wills in the District of Columbia, and also as it appears in the paper purporting to be the renunciation of Emma T. McIntire as an executrix, filed in the matter of the said estate of Adeline McIntire on December 11, 1885.

Mr. HENKLE: I object to the comparison of certain of those papers not filed in these series of cases with papers filed therein, because such papers cannot be introduced legitimately into a case for the purpose of comparison.

A. I have made the comparison of the papers named.

Q. What is the result of that comparison?

A. That it is, in my opinion, in the handwriting of the same person.

Q. Now, I will ask you if you have observed any peculiar marks about any of those papers in the course of your examination; and, if so, to point them out.

A. In the paper marked Exhibit A. H. No. 14 in the case of Pryor *vs.* McIntire, equity, No. 12761, by putting the magnifying glass on the heavy inked shading, denoting that the signature has been painted, we find the understroke of any original letter, especially in the capital letter "T" in the name "Taylor," which denotes that the signature was not made by one writing as a free-hand signature, but has been painted by a heavier stroke and darker ink.

Q. What do you mean by the term "painted" in reference to that signature?

A. That there is an overwriting, overshading; this is done sometimes to make strokes heavier or to complete broken lines in writing.

Q. Do you find any of that in the signature of Emma T. McIntire on the paper marked Exhibit A. H. No. 18 in Pryor *vs.* McIntire, being the contract or purporting to be the contract between Martha McIntire and Medford & Waldron, whereon the name of Emma T. McIntire appears as a witness?

A. I do; the lighter ink in Emma T. McIntire is overwritten in a number of strokes with the dark ink, but whether it was done by herself or another it is impossible to tell.

Q. It has the characteristic of painting, as experts call it?

A. Yes; that appears in that signature.

Q. Have you made a comparison between the signature Emma T. McIntire, as it appears on the card filed as Exhibit A. H. No. 6 on page 103 of the testimony in the case of William E. McIntire *vs.* Edwin A. McIntire, equity, No. 10745, supreme court of the District of Columbia, with the name purporting to be the signature of Emma Taylor in the deed marked Exhibit A. H. No. 1 in the case of Brown *vs.* McIntire, equity, No. 13177, in said court; and, if so, what is the result of that comparison?

A. I have made the comparison and find them similar in their characteristics; that if Emma T. McIntire wrote one she
797 must have written the other. In the word "Emma" upon the card marked Exhibit A. H. No. 6 (McIntire *vs.* McIntire, equity, No. 10745) and "Emma" before "Taylor" in the deed marked Exhibit A. H. No. 1 (Brown *vs.* McIntire, equity, No. 13177) the capital letter "E" belongs to the same school; but the peculiar characteristic occurs in the letter "m," in which the first letter "m" in "Emma Taylor" and the second letter "m" in the name "Emma," after the first part of the letter had been completed to form the letter "n," in each instance a second part was added completing the "m," making the appearance of a small "a" in each of the letters, which is a very singular incident, if such it could be, to occur in different writings in the same letter. That is one peculiarity that I noticed which is common to these two.

Q. When you say that if Emma T. McIntire wrote that she wrote the other, do you mean that the same person wrote both signatures?

A. Yes. This card (Exhibit A. H. No. 6 in McIntire *vs.* McIntire, equity, 10745), it is stated to me, was written by Emma T. McIntire. Whoever wrote the one wrote the other.

Q. I call your attention to the signature of Emma T. McIntire, signed to her testimony on page 591 of the record in the case of Pryor *vs.* McIntire; also on page 115 of the record in the case of Brown *vs.* McIntire, and on page 44 of the record in the case of Hayne *vs.* McIntire, and ask you whether you observe any change in the formation of the capital letter "T" in those signatures to the testimony and the capital letter "T" as it appears in her signatures in the exhibits already shown you; and, if so, whether that change appears to you — have been an intentional one or not.

Mr. HENKLE: I make the same objection heretofore stated as to the comparison with those other papers not in the case.

A. The capital letter "T," just mentioned, in these papers are entirely different from all the other capital letter "T" purporting to have been made by Emma T. McIntire; it undoubtedly is intentional as it appears there, and it does not seem to be a disguise or an attempt to copy any particular formation of letter, but it is made in the free handwriting of the other part of the signature.

Q. What I wanted to get at was whether, taking the signatures of Emma T. McIntire as they appear in the other exhibits as her natural and usual signature — whether the capital letter "T" as it appears in her signatures to her testimony in said cases is not constrained or an intentional change from the formation of the capital letter "T" on the original signatures.

A. It being so absolutely different from the others, it undoubtedly must be intentional.

Mr. HENKLE: Cross-examination waived.

Mr. MACKEY: I here give these papers in evidence.

Mr. HENKLE: What is the object?

Mr. MACKEY: Well, I offer them in evidence.
798 Mr. HENKLE: I want to know the purpose of their offer.
Mr. MACKEY: You can object to them if you like.

NOTE.—The papers referred to as offered in evidence are the papers from the probate court of the District of Columbia, containing the signature of Emma T. McIntire, already in evidence, and the cards with the signatures of Emma T. McIntire in the case of Wm. E. *vs.* Edwin A. McIntire, eq., No. 10745, S. C. D. C., already offered in evidence in these cases.

E. B. HAY.

Subscribed and sworn to before me this 6th day of September, 1893.

ALBERT HARPER, *Examiner.*

(Adjourned.)

SEPTEMBER 15, 1893.

* * * * * * *

ANNIE M. ACKERMAN, who, being recalled and resworn, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. Mrs. Ackerman, look at this paper marked Exhibit A. H. No. 7 in your case, purporting to be a deed, dated September 6, 1884, by you to Martha McIntire and having your name thereon. I want to ask you if you ever signed that deed.

A. Not to my knowledge.

Q. Did you ever convey or make a deed to Martha McIntire of this property for which you have brought suit?

A. No, sir.

Q. This deed recites the consideration of five dollars. Were you ever paid five dollars in September, 1884, by Martha McIntire or Edwin A. McIntire?

A. No, sir.

Q. I show you some letters which have been filed by Mr. McIntire as exhibits to his deposition in your case, one dated January 29, 1882, Camden, New Jersey, purporting to be a letter from you to Edwin A. McIntire, and marked Exhibit A. H. No. 1 in this case; a postal card dated Philadelphia, April 6, 1882, and marked Exhibit A. H. No. 2 in this case; a letter dated February 3, 1882, Camden, New Jersey, and marked Exhibit A. H. No. 3 in this case, and a paper purporting to be signed by you and marked Exhibit A. H. No. 5 in this case. Are those your letters?

A. Yes, sir.

Q. I want to ask you, in reference to this postal card (Exhibit A. H. No. 2), whether you remember making any such erasures as those at the bottom of this card and running those lines across there, or whether you know anything about it?

A. No, sir.

799 Q. Do you remember what was there before it was erased?
A. No; I do not; I could not say.

Q. From these letters it appears that when you first put this property in the hands of Mr. McIntire you were in Camden, New Jersey. Is that correct?

A. Yes, sir; I was visiting in Camden and in Philadelphia. I went right away as soon as the house was in my possession. I never received any rent from it, and I was told to put it in the hands of an agent, which I did.

Q. Who told you?

A. A friend of mine advised me to put it in the hands of an agent, because I would then get the rent and the house be taken care of.

Q. And in consequence of that advice you wrote these letters to Mr. McIntire?

A. Yes, sir.

Q. Then you wrote him that postal card, you say, from Philadelphia?

A. Yes, sir; in answer to a letter. There was a great annoyance about some one going there about the water, the health inspector, or some one. Then, of course, I was anxious to sell, as I thought it would cost so much.

Q. Who wrote the letter to you about that matter?

A. Mr. Edwin A. McIntire.

Q. Have you the letter?

A. No, sir; I destroyed them long ago. He said that if it was not attended to the rent must stop; that no more rent would be paid until that was attended to, and that made me anxious to sell, thinking that it would incur a big expense.

Q. Those are your signatures on the back of those checks (Exhibits A. H. Nos. 4 and 6 in Ackerman *vs.* McIntire), are they not?

A. Yes, sir.

Q. Well, now, do you remember Mr. McIntire giving you a check for twenty-six dollars at the time that he paid you the seventy-five dollars about which you have heretofore testified?

A. No, sir.

Q. Did he give you this check for twenty-six dollars?

A. I do not remember this check at all.

Q. Did he pay you twenty-six dollars subsequent to the date of that check?

A. No, sir; I never got any money from him but once.

Q. And that was the seventy-five dollars you got?

A. Yes, sir.

Q. You have testified in your case-in-chief that you came to my office in response to a note to you. You may state whether or not you were told that you were sent for to see whether you would be a witness or not in the case of Pryor *vs.* McIntire.

Mr. HENKLE: Objected to as not being rebuttal.

A. Mr. Mackey sent for me and wanted to know who Emma Taylor was.

800 Q. For what?

A. To find out something about some property, and if I could testify in any way as to who she was. Well, I told him that I had sold a house to her, or at least to a person by that name, but that I had never seen the person, and so I could not give him any information.

Q. Did you up to that time know or have any reason to believe that Emma Taylor was not a genuine person to whom you had conveyed your property?

Mr. HENKLE: Objected to because inquiring for speculations of the witness and not as to the fact, and therefore it is incompetent and immaterial.

A. I thought it was very strange that I had not seen the person, and my friends said that there was no such person, although I never suspected anything of the kind.

Q. And when did you first find out that there was no such person as Emma Taylor?

A. On coming to your office (referring to Mr. Mackey) and in thinking it over.

Q. On coming to my office when—when I sent for you?

A. When you sent for me.

Q. That is the time you have been speaking about?

A. Yes, sir.

Mr. HENKLE: Question and answer objected to for the reason that it assumes that she has found out that there was no such person, and that is the very question being litigated.

Cross-examination.

By Mr. HENKLE:

Q. Mrs. Ackerman, you have testified in your examination in your own behalf that you did sell this property through Mr. McIntire, have you not?

A. Yes, sir.

Q. You did sell it?

A. I suppose it was sold.

Q. And your information was that it was sold for three hundred dollars?

A. Yes, sir.

Q. Mr. McIntire reported to you that he had sold the property for three hundred dollars?

A. Yes, sir.

Q. And you affirmed or confirmed the action of Mr. McIntire in making that sale for three hundred dollars, did you not?

Mr. MACKEY: Objected to because whether a person confirms or affirms a sale is a question of law and not of fact, and the witness does not pretend to be a lawyer.

A. It was already sold for three hundred dollars. I knew nothing about it and I was not consulted about it.

801 Q. You acquiesced in the sale?

A. I could not do anything else; the thing was gone.

Q. Did you make a deed at that time?

A. I could not say what I made. I signed a paper at one time, and that is all I remember signing, but I suppose it was to give him power to sell.

Q. Did you make a deed?

A. Not that I remember.

Mr. MACKEY: The record shows that she made a deed and we admit that there was a deed made, although I have never seen that deed and we do not know whether Mrs. Ackerman really signed the deed or not.

WITNESS: I do not know what a deed is.

Q. You considered that you had sold the property, did you not?

A. I did.

Q. And you have ever since regarded it as having been passed from your right and your possession?

A. Yes, sir.

Q. And you never since claimed the property until you filed this bill to set aside the deed?

A. No, sir.

Q. You had a settlement with Mr. McIntire, based upon that sale of the property at three hundred dollars, had you not?

A. Yes, sir; I believe so.

Mr. MACKEY: Is not this going into the case-in-chief again?

Mr. HENKLE: No further than you have gone into it.

Q. Subsequent to 1884 or at any other time, I mean after this transaction, did Mr. McIntire or Squire Helmick or anybody else call upon you or see you or confer with you or talk with you about making a quitclaim to that property for the purpose of enabling the owner of it to collect the drawbacks for damages from the District?

A. Not to my knowledge. I do not remember anything of the kind.

Q. Did you ever have any conversation with Mr. McIntire about the damages to the property or about drawbacks?

A. I never knew that there was. There was something, and that is the reason I wanted to sell.

Q. You had talked with Mr. McIntire about that after the sale was made?

A. There was nothing more said after the sale was made, and that was in 1882 or 1883.

Q. You never had anything more to do with it?

A. No, sir.

Q. Did you ever talk with Squire Helmick about it?

A. No, sir. I did not know the man.

Q. And this deed (Exhibit A. H. No. 7) which Mr. Mackey showed

you, you say that you did not make it; that is not your signature at all. Is that what you say?

A. Yes, sir.

802 Q. I believe you said that this is your signature on the back of Exhibit A. H. No. 6, being the check dated April 28, 1882, for twenty-six dollars and forty-five cents?

A. Yes, sir.

Q. Do you know when you made that?

A. I do not know the date exactly. I suppose the date is on there; it was when I went to get the money for the house. I was told to call at a certain time to get the three hundred dollars.

Q. Mr. Mackey has asked you about your first visit to his office. You say that you came in response to a letter which you received from him. Is that right?

A. Well, I had been corresponding about the house from New York and said when I came to the city I should go there and see about it.

Q. I am talking about your visit to Mr. Mackey's office.

A. Oh, yes, sir.

Q. Have you that letter?

A. I had it up to a short time ago. I did not think it necessary to preserve it. It was merely asking me to come to his office, as he wished to see me on business.

Q. What did you do with it?

A. I suppose I destroyed it, like I do all my old letters.

Q. Do you know that you destroyed it?

A. Yes, sir.

Q. So that you have not the letter?

A. No, sir.

Q. When you came to the office of Mr. Mackey you say that you for the first time then learned that Emma Taylor was not a real person?

A. I did.

Q. How did you learn it?

A. By thinking over what had occurred—not seeing the person, and only hearing tell of her.

Q. Did you not learn it from Mr. Mackey telling it to you?

A. No; not directly.

Q. Well, did you indirectly?

A. Well, there were other circumstances from which I naturally inferred.

Q. Did not Mr. Mackey try to satisfy you that Emma Taylor was not a real person?

A. No, sir; because he wished to find out from me who she was, and I would like to know who she is.

Q. He asked you, in the first place, if you knew her?

A. Yes, sir.

Q. How did he know that you knew anything about Emma Taylor?

A. I did not ask him.

Q. Did he tell you that he suspected that you knew anything about her?

803 A. He said that he was trying to find out who she was and wanted to know if I knew.

Q. Did he say why he inquired of you?

A. Because he thought I knew, as I had business with her.

Mr. MACKEY: I object to all this.

Q. What reason did he give you for supposing that you knew anything about her?

A. Because I had sold her some property.

Q. How did he know anything about that?

A. I do not know. I suppose he found it out in some way.

Q. Did he tell you how he found it out?

A. No, sir.

Q. Well, now, he went on and tried to satisfy you that she was not a real person?

Mr. MACKEY: I have let this go on about long enough. I have no objection to it, but I think my indulgence has gone far enough, and I object to any further interrogation of the witness in regard to her conversations with me about her case, as she was consulting with me about her case as her counsel, and the counsel for the defendant well knows that such evidence is not admissible, and if he pursues it I will direct the witness not to answer.

Mr. HENKLE: I was pursuing the inquiry of the witness that was entered upon by Mr. Mackey himself in his direct examination; he asked her how it was she came to his office and what was said when she came about Emma Taylor, and I was simply verifying it and at a time antecedent to the relation of counsel and client.

Mr. MACKEY: I have been perfectly willing to let the counsel interrogate the witness as to any conversations which she had with me in refereuce to why I sent for her; but when he goes into the subject of my conversation with her about her case I object to it, and my only objection to it is because I think I have indulged counsel for the defendant long enough. It is a matter utterly impertinent to this case and inadmissible. Counsel for defendant well knows that conversations and consultations between counsel and client are not admissible in a case.

Mr. HENKLE: The witness has testified that she learned first at Mr. Mackey's office, on the occasion of that visit, that Emma Taylor was not a real person, and that she had never before suspected it; now, I insist that I have the right to know how she learned it upon that occasion, and my inquiries are directed to that purpose.

Mr. MACKEY: I have no objection whatever to your knowing how she ascertained that Emma Taylor was not a genuine person, but I object to your interrogating her as to any conversations had with her counsel; and, if you desire, I can admit on the record as to how she learned it, if that is what you want to know.

Mr. HENKLE: No; I want to ask her.

Mr. MACKEY: That is exactly it. You want to examine
804 her as to conversations had with me, but you shall not do it with my permission.

(NOTE.—No answer to the last question.)

Q. When did you employ Mr. Mackey?

Mr. MACKEY: I object to that as matter having been gone into in the case-in-chief, and has nothing whatever to do with this case, anyhow; but those questions were asked in the case-in-chief.

Mr. HENKLE: Mr. Mackey objects to my interrogating the witness as to things which transpired in his office because it is invading the privilege of communications between counsel and client. I am now proposing to ascertain, if I can, when the relation of counsel and client began and to make inquiries prior to that time. Now, do I understand you to object?

Mr. MACKEY: I object because any information I imparted to her or she imparted to me prior to her engagement of me as her counsel would by reason of her employment relate to her subsequent employment.

(NOTE.—No answer to last question.)

Q. Now, I want to ask the witness this question: I want to know what Mr. Mackey or anybody else in Mr. Mackey's office, upon your first visit and before you had employed him in your own case, said to you or what anybody said to you in his presence and yours upon that occasion which led you to believe that Emma Taylor was not a real person.

Mr. MACKEY: I object to that question and instruct the witness that she has the right not to answer.

(NOTE.—No answer to last question.)

Q. Do you decline to answer?

A. I suppose I do. I do not know.

Q. Do you decline to answer because you are instructed by your counsel not to answer?

A. Not exactly, but because I could not say what.

Mr. MACKEY: I have not instructed her not to answer. I have instructed her that she has the right to refuse to answer any questions about conversations with me in relation to her case.

Q. Do you refuse to answer?

A. No, sir; I refuse because I do not know what to answer.

Q. Then you do not refuse to answer?

A. No, sir.

Mr. HENKLE: Then I will repeat the question.

Q. (Question repeated.) I want to know what Mr. Mackey or anybody else in Mr. Mackey's office, upon your first visit and before you had employed him in your own case, said to you or what anybody said to you, in his presence and yours, upon that occasion, which led you to believe that Emma Taylor was not a real person.

Mr. MACKEY (to witness): I instruct you, as your counsel, that

you have the right to refuse to answer that question so far as it refers to any conversations that you had with your counsel,
805 and that you not only have the right to refuse but ought to refuse to answer it.

(NOTE.—No answer to last question.)

Q. Now, do you refuse to answer?
A. I do.

Mr. HENKLE: That is all.

ANNIE M. ACKERMAN.

* * * * * * *

Testimony in Surrebuttal.

MARCH 2, 1894—Friday, at 4 o'clock p. m.

Met pursuant to agreement.

Appearances: Franklin H. Mackey, Esq., of solicitors for the complainant; S. S. Henkle, Esq., solicitor for the defendant Edwin A. McIntire, who is present; also the examiner and—

GEORGE T. GIBBONS, who, being produced as a witness of lawful age (in surrebuttal for and on behalf of the defendants) and being first duly sworn, deposes and says:

Direct examination.

By Mr. HENKLE:

Q. Where do you reside, Mr. Gibbons?
A. In this city, at No. 453 P street northwest.
Q. And how long have you lived in this city?
A. I have lived in this city for about forty-five years.
Q. And your business is what?
A. That of a constable.
Q. You have been a constable how long?
A. About thirty-six years.
Q. State whether or not you were associated with Squire Helmick, late of this city, in your official capacity as a constable; and, if so, for how long.
A. Yes, sir; during the time that he was a justice of the peace; I do not know how long exactly. When he first got his commission I went with him and stayed with him until his death.
Q. That is, you were his constable?
A. Yes, sir.
Q. And where did you have your office?
A. Right with him in his office. I had no other office. I was in his office all the time.
Q. What opportunities had you for observing his system as a magistrate in doing business?
A. Well, by being there with him, right alongside of him, during his office hours when he was at business. I was there with him the greater part of the day and in the evenings, too, when he would have a good many writs for me to serve; then I would wait until

evening, when the office closed up, to serve my writs after
806 the office hours, as I do now with Judge Strider. I was in the office probably two-thirds of the day during office hours.

Q. Will you please state what his custom was in taking acknowledgments of deeds where he was not acquainted with the person who proposed to make the acknowledgment?

Mr. MACKEY: I object to that, first, upon the ground that it is generally inadmissible, the custom of an acknowledging officer in the acknowledgment of deeds not validating the acknowledgment unless his custom was in accordance with the statute; secondly, because inadmissible upon surrebuttal, and, thirdly, because the question is not what his custom was in any particular case, but what he actually did in this case.

A. Well, I have been present in cases of that kind before Judge Helmick. I could not pretend to say how many times; but when parties came in there with whom he was not acquainted for the acknowledgment of any legal papers which were to go before any court he would not take the acknowledgment without bringing in some one who was acquainted with the parties and identify them, and then act as a witness to the paper. That was his custom in all his dealings in signing legal papers where a party came in to make acknowledgments with whom he was not acquainted.

Q. Will you state whether or not you ever knew him to depart from that custom?

A. Not once. He was very particular in that regard; I never saw one more so. In other words, what I can say for him is that he was a gentleman in his business in all capacities.

Q. Will you be kind enough to state whether or not you were familiar with his signature?

A. Yes, sir; I ought to be; I have seen him write it a thousand times, I reckon.

Q. Mr. Gibbons, I hand you Exhibit A. H. No. 7 in this case of Ackerman *vs.* McIntire, purporting to be a deed from Annie M. Ackerman to Martha McIntire, bearing date December 6, 1884, and call your attention to the signature "Wm. Helmick" to the acknowledgment of that deed and ask you whether or not that is his genuine signature.

Mr. MACKEY: I object to that as not proper on surrebuttal and inadmissible for that reason.

A. That name at the bottom of that deed is, to the best of my knowledge and belief, Mr. Helmick's signature.

Q. Have you any doubt about it?

A. None whatever; not the least in the world.

Q. Look further up on that page of that deed to where the same name occurs as a witness to the signature "Annie M. Ackerman" and state what you have to say about that.

A. That I am not so sure about. I would not like to swear that is Judge Helmick's writing. If you take the capital letter
807 "W" away there I will say it is his signature; but that capital letter "W" is not in his official signature.

Q. Wherein does that "W" differ from the "W" in his official signature?

Mr. MACKEY: I object to the question because the witness is not an expert in handwriting and does not claim to be.

Mr. HENKLE: He is not an expert, but he is testifying to facts which he knows.

A. I have often laughed at Judge Helmick in making the capital letter "W" in his official signature. He always makes a "Y" for his "W" in the first part of it—that is in writing the "Wm." he always makes the "Y," it seems to me, before he made the capital letter "W." If you will look at his official signature you will always find that "Y" there in the beginning of the "W." I can bring his signatures a thousand times where the "Y" is made there. In this signature "Wm. Helmick," as a witness to the deed, he has made no "Y" in the beginning of the "W" there.

Q. That ear-mark is not there?

A. No, sir. If that "W" was off I would consider that Mr. Helmick's signature.

Q. If that "W" were presented to you alone you would say it was not Judge Helmick's signature?

A. Yes, sir.

Q. But if that "W" was off what would you say?

A. I would say that it was Judge Helmick's signature.

Mr. MACKEY: All this is objected to as improper.

Q. Would you have any doubt about it being his signature if that capital letter "W" were off?

A. No, sir; not beyond the "W."

Mr. MACKEY: I wish now to enter my objections to the questions and answers in relation to the handwriting of Mr. Wm. Helmick as not proper on surrebuttal. If admissible at all, such testimony should have been given in the defendant's case-in-chief.

Cross-examination.

By Mr. MACKEY:

Q. Did Mr. Helmick know Mr. Edwin A. McIntire?

A. Yes, sir.

Q. Intimately?

A. Yes, sir.

Q. He was well acquainted with him?

A. Yes, sir.

Q. Did he not have Mr. Helmick take a great many acknowledgments for him to deeds?

A. I think so. I do not know whether a great many, but he used to take a number.

Q. Frequently?

A. Frequently.

808 Q. Did you ever see Mr. Edwin A. McIntire come in there with a lady to acknowledge a deed?

A. I might have been there, but I do not remember positively about that matter.

Q. You have seen Mr. Edwin A. McIntire come in there frequently, however, and acknowledge before Judge Helmick deeds?

A. Yes, sir.

Q. But you do not remember ever seeing him bring anybody in there to acknowledge a deed?

A. No, sir; I do not remember any particular lady or gentleman.

Q. You do not remember who the parties were; but do you remember his ever taking anybody there and introducing them to Mr. Helmick?

A. I have known Mr. McIntire to have others in there with him acknowledging deeds.

Q. Did you ever know Mr. Edwin A. McIntire to take any party, any lady, to Mr. Helmick and have that lady sign or acknowledge a deed before Mr. Helmick?

A. No, sir.

Q. So that whether Mr. Helmick required Mr. McIntire to introduce the lady to him or whether he took Mr. McIntire's word for it, you are unable to say?

A. I am unable to answer that question.

Q. Do you think Mr. McIntire would have taken Mr. McIntire's word or statement as to who the party was making the acknowledgment?

A. Well, I think he would. I think he has done it. Mr. McIntire was a gentleman that Mr. Helmick held very highly as a man of integrity and honesty, and an upright gentleman in business. I think he would have taken his word, but that is only a supposition, for I do not know that from anything that Mr. Helmick said.

Q. But you say that from what you knew of the close acquaintance of Mr. Helmick and Mr. McIntire?

A. Yes, sir; and the confidence that Mr. Helmick had in Mr. McIntire.

Q. Do you claim to be an expert in handwriting?

A. No, sir; far from it.

Q. Would it be possible for any person to forge your signature so as to deceive you?

A. I think they might.

Q. Could not somebody forge Mr. Helmick's signature so as to deceive you?

A. Yes, sir; they might do it, but I should take it for Mr. Helmick's signature if it looked like the one to the acknowledgment of this deed (Exhibit A. H. No. 7) shown me in this case.

Q. Not being an expert in handwriting, you would not venture to say that you might not be deceived about Mr. Helmick's signature?

A. Not at all.

809 Q. Did Mr. Helmick, when he took the acknowledgment of a deed, always put his official character after his signature—that is, the words "justice of the peace"?

A. Yes, sir; I think he did, but I will not be certain about that.

Q. When he took the acknowledgment to a deed did he do it as a justice of the peace or as a notary public?

A. As a justice of the peace. He was not a notary public. He always put his seal.

Q. His seal after the words "justice of the peace"?

A. Yes, sir.

Q. And write the words "justice of the peace" underneath?

A. I do not know about that. He always wrote "J. P." and a scroll or something like that. I think, as a general thing, I always noticed him write "J. P."

Q. Did Mr. Helmick write a ready, flowing hand?

A. Yes, sir.

Q. Was there any trembling about his handwriting?

A. There was trembling in his handwriting in the latter part of his life, but he wrote a very full, open hand—very easy to read.

Q. Now, you only judge that this signature, "Wm. Helmick," at the bottom of the second page of this deed, or what purports to be a quitclaim deed from Annie M. Ackerman to Martha McIntire (Exhibit A. H. No. 7), dated September 6, 1884, is Judge Helmick's signature because it looks like his signature?

A. Yes, sir; to the best of my knowledge and belief it is his signature.

Q. But you have already said that his signature could be forged so as to deceive you?

A. Yes, sir.

Q. This might be forged, for ought you know, might it not?

A. That I could not tell; it might be.

Redirect.

By Mr. HENKLE:

Q. Have you any doubt of that being his signature?

A. I have not the least in the world.

Q. You would not hesitate to act upon it as his genuine signature?

Mr. MACKEY: Objected to.

A. Not at all.

Recross.

By Mr. MACKEY:

Q. And yet you might be deceived in it?

A. Yes, sir; as many another poor fellow has been deceived in this world by signatures.

810 Redirect.

By Mr. HENKLE:

Q. I omitted a question that I wanted to ask you, Mr. Gibbons, and that is whether you know Miss Emma T. McIntire.

A. Yes, sir; very well.

Q. Do you know whether or not she was in the office of her brother, Edwin A. McIntire?
A. She was there for a long time.

Mr. MACKEY: Objected to as inadmissible upon surrebuttal.

Q. How near was the offices of Judge Helmick and of Mr. Edwin A. McIntire to each other?
A. Just a door or two apart.

Mr. MACKEY: Same objection.

Q. Do you know whether Judge Helmick knew Miss Emma T. McIntire?
A. Yes, sir; he knew her well.

Mr. MACKEY: Same objection.

Q. That you know?
A. Yes, sir; that I do know.

Mr. MACKEY: Same objection.

GEO. T. GIBBONS.

Subscribed and sworn to before me this 2nd day of March, 1894.
ALBERT HARPER, *Examiner.*

MARCH 3, 1894—Saturday, at 4.30 o'clock p. m.

Met pursuant to agreement.
Appearances: Franklin H. Mackey, Esq., of solicitors for the complainant; also the examiner and S. S. Henkle, Esq., solicitor for the defendant.

EDWIN A. MCINTIRE, who, being recalled as a witness of lawful age (in surrebuttal) for and on behalf of the defendants and being resworn, deposes and says:

Direct examination.

By Mr. HENKLE:

Q. On pages ninety-nine and one hundred of the record of testimony of this case of Ackerman *vs.* McIntire, Mr. MacLelan, testifying as an expert, and, on page one hundred and six, Mr. Hay, testifying also as an expert, comment upon the signature of Annie M. Ackerman to the quitclaim deed (Exhibit A. H. No. 7) and conclude that it is not the genuine signature of Mrs. Ackerman. What have you to say to that?

Mr. MACKEY: Objected to as not competent on surrebuttal and because the witness has testified all about it.

811 A. Mrs. Ackerman acknowledged to me that she had signed that paper (Exhibit A. H. No. 7) and stated what she used the consideration money for. She said that she wanted to buy a parasol, and she wanted to get that five dollars to pay for the parasol. I remember distinctly the conversation with her in my office.

Q. Why did you take that quitclaim deed?

Mr. MACKEY: Objected to as not being proper on surrebuttal.

A. I was then under the impression, when I first wrote that deed, that there might possibly be a chance of obtaining something from the District by way of damages for cutting down the streets, but about the time she signed it, or within a few days thereafter, I ascertained that the District Government were not paying any damages, and I always since looked upon that deed as being valueless.

Q. On page 102 Mr. MacLelan says that the signature "Wm. Helmick" to this quitclaim deed (Exhibit A. H. No. 7) may have been written on a sick bed; that it might have been written by Mr. Helmick on his sick bed. What was Mr. Helmick's condition on or about those times?

A. Mr. Gibbons testified yesterday, and I bear him out in his recollection of the condition of Mr. Helmick, that Mr. Helmick was in very poor health for many years previous to his decease. For a great part of the time his business had to be transacted by Mr. Caywood in his presence.

Q. I do not remember what you testified to upon your examination-in-chief or when your testimony was taken as to this deed (Exhibit A. H. No. 7), but I will ask you anyhow whether you know this signature to have been hers; and, if so, how?

A. I am positive it is hers from seeing her signature many times and from her having acknowledged to me that she had acknowledged the quitclaim deed, and in a conversation I had with her on the subject of that deed she spoke of the use she put the money to.

Q. Where did you receive the deed?

A. I received the deed from Judge Helmick.

Q. You did not see her sign it?

A. I am not positive on that point whether I saw her sign it or not, but she has acknowledged it to me.

Q. How did Judge Helmick come by the deed?

A. I gave it to him with a number of other deeds to get the signatures covering damages to properties. It was at a time when I thought damages could be recovered from the city in cases where streets had been cut down in front of the properties.

Cross-examination.

By Mr. MACKEY:

Q. Did Justice Helmick know Annie M. Ackerman?

A. I think he did.

Q. Do you know whether he did or not?

812 A. I could not state positively, but that is my impression that he did know her.

Q. Did you draw up this deed before you sent it there or before you took it there?

A. I could not take it there before I drew it up.

Q. Might not you have drawn it up there?

WITNESS: In Justice Helmick's office?

Mr. MACKEY: Yes.

A. I do not remember writing any deed in Mr. Helmick's office but once.

Q. Then you did not write this deed (Exhibit A. H. No. 7) in Justice Helmick's office?

A. No; I think I wrote it in my own office.

Q. You took it there for execution?

A. I am not certain whether I took it. He was in my office very often every day, and I might have given it to him there or I may have sent it to him or taken it to him in his office.

Q. And then she went to his office and executed it?

A. I am not positive of that, whether she came to his office or to my office or whether he went to her house. I cannot remember anything of that kind so long ago unless there was something particular about it.

Q. When did you pay her the five dollars?

A. The five dollars was handed to Justice Helmick with other payments that I made to him when I gave him the deeds, but it was very shortly after that period that she told me, in regard to the five dollars, what she had used it for or what she proposed to use it for.

EDWIN A. McINTIRE.

* * * * * * *

(Adjourned.)

MARCH 6, 1894.

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Edwin A. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. On page 110 of the record of testimony in this case of Ackerman, Mr. Hay, testifying as an expert, stated that the signature "Emma T. McIntire" as a witness to the contract filed as Exhibit A. H. No. 18 in the case of Pryor *vs.* McIntire, being one of those series of cases, has the characteristic of painting. What have you to say to that?

A. I think that signature would show to any person that it was commenced with a bad pen or inferior ink, and that the signature was resumed with better pen or ink.

813 Mr. MACKEY: I object to this, as the witness is not put upon the stand as an expert.

Q. On the same page, 110, of the record of testimony in this Ackerman case Mr. Hay refers to a certain card marked Exhibit A. H. No. 6 and to be found at page 103 of the record of testimony in the case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, in the supreme court of the District of Columbia, and in his testimony as an expert he has assumed that the signature

"Emma T. McIntire" upon that card is the genuine signature of Emma T. McIntire, and, as such, he compared other signatures in evidence in this case with that signature, assuming it to be genuine. I want you to say now what you know about that card and as to who wrote the name "Emma T. McIntire" upon it.

Mr. MACKEY: This is objected to as not proper on surrebuttal; the whole matter of these cards, as to whom they were written by and so on, has been gone into in the defendant's testimony-in-chief, and it is incompetent to reopen the matter in surrebuttal.

Mr. HENKLE: Counsel for the defendant says that it is now offered in surrebuttal because the evidence of Mr. Hay was offered in rebuttal touching these cards, and it is by way of reply to his testimony.

Mr. MACKEY: The witness has already stated that the card (Exhibit A. H. No. 6 in McIntire *vs.* McIntire) was not written by Emma T. McIntire, and he can only restate it in his examination on surrebuttal.

Mr. HENKLE: That is what he is doing now.

Mr. MACKEY: Well, he cannot restate his whole case.

Mr. HENKLE: He can state what is necessary in reply to Mr. Hay.

A. That signature on this card, Exhibit A. H. No. 6 (McIntire *vs.* McIntire), was not seen by Emma T. McIntire until she was on the stand here in one of these cases that Mr. Mackey has instigated. It was gotten up in the office of Justice Helmick and was written for the purpose of testing the witness, Mrs. Annie Laura Galliher, who had testified that she knew quite well the signature of Emma T. McIntire, and I was confident she never even saw Emma T. McIntire write her name.

Q. When was it offered to Annie Laura Galliher?

Mr. MACKEY: Objected to for the reasons above stated and because the witness should not give a rehash of his previous testimony.

A. It was offered when Mrs. Galliher was on the stand as a witness in the case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, in the supreme court of the District of Columbia.

Q. Was it upon cross-examination or on direct examination?

A. Upon cross-examination.

Q. And by whom was it offered?

A. By my counsel, General Henkle.

814 Q. You offered in evidence as Exhibit A. H. No. 2 in this case of Ackerman a postal card from the complainant, Annie M. Ackerman, to you, bearing date April 6, 1882, at the bottom of which there seems to be some erasures. Mrs. Ackerman has testified that she knew nothing about those erasures. What have you to say with regard to them yourself?

A. I say that the postal card (Exhibit A. H. No. 2), with the exception of the examiner's mark on it, is exactly in the condition in which I received it through the mails.

Q. As to those erasures, do you know when or by whom they were made?

A. I presume they were made by her. They were made before I received the card through the mails.

Mr. MACKEY: Cross-examination waived.

EDWIN A. McINTIRE.

* * * * * * *

Mr. HENKLE: I desire to offer in evidence the paper which I now hand to the examiner to be marked, being a certificate of the clerk of the supreme court of the District of Columbia to the effect that on September 23, 1893, the case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, in said cause has been entered dismissed by precipe of complainant.

Mr. MACKEY: Do you offer it in evidence?

Mr. HENKLE: Yes; I here give it in evidence.

NOTE.—And the same is herewith filed in evidence, marked Exhibit A. H. No. 9.

Mr. MACKEY: To the admission of which I object, and I propose to cross-examine Mr. Edwin A. McIntire about it.

Mr. HENKLE: I offer this paper in evidence without asking Mr. Edwin A. McIntire anything about it.

Mr. MACKEY: But I propose to cross-examine the defendant Edwin A. McIntire about it.

Mr. E. A. McINTIRE: Then you will call me as your own witness about it.

Mr. HENKLE: Mr. McIntire will answer your questions.

Mr. MACKEY: Now, after having a colloquy with your counsel, while you are upon the stand, will you answer my questions?

Mr. E. A. McINTIRE: My counsel merely asked me if I had any objection to answering them, and I told him no.

Mr. MACKEY: Well, will you answer my questions in relation to this matter?

Mr. E. A. McINTIRE: I have no objection to answering your questions about it.

815 Whereupon EDWIN A. McINTIRE further testifies as follows:

By Mr. MACKEY:

Q. How did this case of William E. McIntire *vs.* Edwin A. McIntire *et al.*, equity, No. 10745, in the supreme court of the District of Columbia, come to be dismissed? Was it done with the knowledge of Mr. William G. Johnson, counsel for William E. McIntire in that case?

A. Mr. Johnson had nothing to do with it. It was done by the explicit direction of William E. McIntire himself.

Q. I asked you if it was done with the knowledge of Mr. William G. Johnson, counsel for Mr. McIntire in that case.

A. I did not consult him. Mr. William E. McIntire came to me

himself and told me that he wanted it done; he came from the State of Washington to have it done.

Q. Did you not pay him a sum of money?

A. No; I did not myself.

Q. Was not a sum of money paid him?

A. Yes; there was; but no more than we had agreed all along to pay him what we thought was due to him.

Q. By your direction was it?

A. No; by my consent; but no more than what was agreed to be done in the answer made to the bill that was filed by me in that case.

Q. And on receipt of that sum of money he agreed to dismiss the suit?

A. He agreed to dismiss it without any sum at all being paid.

Q. You gave him the money as charity?

A. No, sir; I did not say anything of the kind. We gave it to him because my nephew was entitled to it. If you had read the answer we made in that case you would see the motive which prompted us to do it. In the answer made by myself and my sister we said that we were going to do it, and we did just what we said we would do.

Q. Did you consult with your own counsel, General Henkle, about it?

A. I do not remember consulting him. I remember telling him.

Q. About it before it was dismissed or afterwards?

A. After it was dismissed; because the young man came to me and surprised me by coming to me to tell me that it was his desire to have the old quarrel in the family ended. He said that he was drawn into it and had never employed Mr. Johnson as his attorney; that his sister, Mrs. Galliher, had brought the suit and had forced him into it, and that he did not want the quarrel to exist in the family.

Q. You hugged and kissed and made up. Is that it?

A. I did not say anything of that kind. William E. McIntire and I had always been friends, or rather on friendly terms.

816 Mr. MACKEY: I shall move the court to strike out this paper filed as Exhibit A. H. No. 9 in this case and all the statements of the defendant Edwin A. McIntire in regard to what was told him by William E. McIntire.

EDWIN A. McINTIRE.

Subscribed and sworn to before me this 6th day of March, 1894.

ALBERT HARPER, *Examiner.*

(Adjourned.)

MARCH 7, 1894—Wednesday, 1.30 o'clock p m.

Met pursuant to adjournment.

Appearances: Franklin H. Mackey, Esq, solicitor for the complainant; S. S. Henkle, Esq., solicitor for the defendant Edwin A. McIntire, who is present; also the examiner and the defendant.

EMMA T. MCINTIRE, who, being recalled as a witness of lawful age (in surrebuttal) and being resworn, deposes and says:

Direct examination.

By Mr. HENKLE:

Q. Will you look at this Exhibit A. H. No. 18, filed in the case of Pryor *vs.* McIntire, and about which expert testimony has been given in this case of Ackerman *v.* McIntire, being copy of the contract between your sister, Martha McIntire, and Medford & Waldron, at what purports to be your signature as a witness to that contract, and say whether it is genuine or not?

Mr. MACKEY: Objected to as not being competent in surrebuttal. It has been testified to already in the testimony-in-chief of the defendant.

Mr. HENKLE: Counsel for the defendant says that the question is simply preliminary to another which he proposes to ask in reply to the testimony of Mr. Hay as an expert in this case of Ackerman *vs.* McIntire.

A. That is my signature.

Q. Mr. Hay, on page 110 of the record of testimony in this Ackerman case, testifying as an expert, says that that signature has the characteristic of painting. What have you to say about the manner in which that signature was made; whether it is your natural signature and how you made it?

A. It is my natural signature, and to me now looks as if there was a hair on the pen. I did it; I wrote it.

Q. Was there or not any effort or attempt to change your natural signature?

A. No, sir; I may have written it with two pens—one bad pen and the other a better one. In fact, the first name looks as if I did write with another pen, but I wrote it all.

Q. You mean that you wrote it over?

A. No; I wrote the name, and it has not been "painted," from what I understand he means by "painting."

817 Q. In the signature to your testimony in this case and other cases in which your brother is defendant and which are now pending, in signing your name to the testimony which you have given as a witness in these cases I want to know whether there was any effort on your part to change or disguise your usual handwriting.

A. No, sir; I wrote it very hastily and just naturally. I always now write my name fast.

Q. How is it as to your signature being uniform in its characteristics or not?

A. No, sir; it is not uniform. Sometimes I make the capital letter "E" like the figure "three" inverted; sometimes I make a loop to it; sometimes I make the "T" like the figure "7," and sometimes I do not write the whole of the first name.

Q. In speaking about the capital letter "T" you say that some-

times you make it like the figure "7." At other times how do you make it?

Mr. MACKEY: Do not suggest to the witness.

Mr. HENKLE: I simply want to get at it in some way.

A. I do not know how to describe it in words. I make it like a little loop at the top.

Q. How do you carry the top stroke?

A. Sometimes like the Spencerian style.

Q. You mean that you carry it clear across?

A. With a curve at the top.

Q. Is that or not the prevailing style of your making the capital letter "T"?

A. It is not now. My prevailing style is like the figure "7."

Q. What has it been at other times heretofore?

A. With a curve at the top.

Q. Has it at any time been uniform?

A. No, sir.

Q. You have testified heretofore as to the financial affairs of your sister, Martha McIntire. I want to ask you whether you know anything of her having deposits in the Central National Bank of Philadelphia for which she took certificates of deposit and which did not go upon her general account.

Mr. MACKEY: Objected to because not competent upon surrebuttal, and also because the best evidence of the fact of certificates of deposit is the written evidence in the bank.

A. Yes, sir; I know that she has had certificates of deposit on that bank which did not go into her general account in the bank.

Q. Had you any idea as to how many such certificates and what in amount?

Mr. MACKEY: Objected to for the same reason as to the former question.

A. My recollections is either five or six.

Q. Different certificates?

A. Five or six different certificates.

818 Q. Can you approximate the aggregate amount of those certificates?

Mr. MACKEY: Objected to for the same reasons.

A. I do not think I can call it to mind now.

Cross-examination.

By Mr. MACKEY:

Q. You say this signature to this contract (Exhibit A. H. No. 18 in Pryor *vs.* McIntire) is your natural signature, is it?

A. It is my signature.

Q. Is it your natural signature?

A. I do not know what you mean by natural signature.

Q. Did you not say that it is your natural signature?

A. I do not know what you mean by that.

Q. What do you mean it being your natural signature, as you stated in your direct examination?

A. I mean that I wrote it. Nobody else wrote it.

Q. You say that you now write the capital letter "T" in your name like the figure "7." When did you first begin to do that?

A. I do not remember.

Q. Did you begin to do it before the taking of any testimony in this case?

A. I do not remember.

Q. Can you remember whether you ever made the capital letter "T" like that in your signatures to this testimony in these cases before the taking of that testimony?

A. I may or may not; I do not remember.

Q. You write it now that way all the time, do you?

A. I say my signature is not uniform.

Redirect.

By Mr. HENKLE:

Q. I simply want to ask you whether in writing your signature to the testimony in these cases you purposely changed your signature from the form in which you had been used heretofore in making it or not.

Mr. MACKEY: Objected to as leading.

A. No, sir. I remember a little circumstance about the signing my name to the testimony. I was in my brother's office and Mr. Harper handed me a pen to sign my name to the testimony; he seemed to be in a hurry, and some one said, "It is a bad pen;" I said, "I could not sign my name very well with it," but I signed my name with it; and I said to Mr. Harper, "Mr. Mackey will criticise that writing;" and Mr. Harper said, "Oh, I guess not," or something to that effect.

819 Recross.

By Mr. MACKEY:

Q. Was it a worse pen when you wrote your signature to the testimony in these cases than the pen with which you signed this Emma T. McIntire to this Exhibit A. H. No. 18, filed in the Pryor case?

WITNESS: When was that contract?

Mr. MACKEY: When you signed that contract.

WITNESS: What year was that?

Mr. MACKEY: I am asking you the question whether the pen with which you signed your signature to the testimony in these various cases was any worse that the pen with which you signed your signature as a witness to this contract of your sister, Martha McIntire, with Medford and Waldron.

A. I do not recollect; I had not the pleasure of your acquaintance at that time.

Q. I was not asking you in regard to your acquaintance with me. I was asking you in regard to the pen with which you wrote this signature of yours to the contract of Medford and Waldron with your sister Martha, and whether that pen was a worse pen than the pen with which you wrote your signature to thet testimony in these various cases.

A. I told you that I do not recollect.

Q. Did not you explain in your testimony a moment ago, in response to what General Henkle asked you, that this signature of yours to the contract of Medford and Waldron with your sister, Martha McIntire, has its peculiar characteristics by reason of the fact that you had a bad pen with which to sign it?

A. I said that it looks as if I had a bad pen to commence it with—as if there was a hair on the pen.

Q. Why did you not write your signature then with that bad pen as you wrote it in your testimony in these various cases?

A. I would have done so if I was acquainted with you then.

Q. You wrote your signature then to this testimony in this way because you were acquainted with me?

A. Yes, sir. Mr. Harper gave me the pen in writing this last signature.

EMMA T. McINTIRE.

* * * * * * *

NOTE.—The examiner is requested by the solicitors for the respective parties to enter of record the following stipulation as to the evidence in this case:

It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, equity, No. 12761; Brown *vs.* McIntire, equity, No. 12977; Ackerman *vs.* McIntire, equity, No. 12978; Southey *vs.* McIntire, equity, No. 13034, and Hayne *vs.* McIntire, equity, No. 13177, in the supreme court of the District of Columbia, so far as the same
820 may be relevant to the issues raised on this case of Ackerman *vs.* McIntire (equity No. 12978), in respect of Emma Taylor, Martha McIntire, or Edwin A. McIntire, may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein, subject to all and any objection as to the materiality and competency thereof which could have been made if the same had been taken herein.

Mr. HENKLE: Testimony in behalf of the defendants in surrebuttal is here closed.

* * * * * * *

EXHIBIT A. H. No. 1.

408 BRIDGE AVENUE, CAMDEN, N. J., *Jan'y 29th*, 1882.

DEAR SIR: I desire that you take charge of a small house I have in your city. Other persons to whom I have entrusted it for the past 6 months have failed to respond, and I do not feel able to lose

all. Mr. James Hodges told me to put it in your hands, as you did business in the right way, and now I wish you to commenced with 1st of Feb'y and see what can be done. I did desire to sell, but was advised to get a trustworthy agent and have the little that I could every month; it is all I have and the money would soon go, and if I waited awhile I could do better. I expect to come to Washington about the last of February. If I should be disappointed in coming, this letter to you will have the same effect, so I was advised to write.

Very respectfully, A. M. ACKERMAN.

The house is No. 408 11th St. S. E.

EXHIBIT A. H. No. 2.

POSTAL CARD. Philadelphia, Pa. 6 2 p. m. (Stamp.)

Nothing but the address can be placed on this side.

E. A. MCINTIRE,
No. 918 F Street,
Washington, D. C.

(Reverse.)

1412 SOUTH STREET, PHILADA., *April* 6, '82.

DEAR SIR: I received your letter. I would like to sell, as it will never be any profit to me to keep the house. A gentleman with whom I am stopping will call next Monday to see you.

Very respectfully, A. M. A.

[Written across the face:] Is not this a good time to sell?

821 EXHIBIT A. H. No. 3.

No. 408 BRIDGE AVENUE, CAMDEN, N. J., *Feb. 3rd*, 1882.

Mr. McIntire.

DEAR SIR: I am really glad to hear from you and only wish I had consulted you sooner, but I thought every one would do right by me, but I can trust no one. I find that since I have been alone I am much imposed upon. Mr. Wright received the money, I know, and said he spent it because they really needed bread—well, what could I say to that?—and then, on the day before I came away, I met Mr. Griggs on the street and asked him if he could sell it for me and could trust him. He talked *a* fairly and I came away, but I have sent several postals to him telling him I needed the money; said he did not get it and was unable to make the sale just now; then I was afraid he would sell it and I would have nothing. You see there is not much business in me. Well, I cannot be harsh with any one. About the hydrant, Mr. Wright said, Now, if you put a hydrant in for these people they will stay there, and

the house will sell better. I paid $28 of money I had—and I have never made it up yet—to a Mr. Tolson, plumber, on 7th street S. E. He said he would do a good job—put the hydrant in properly and make a sewer or place to run the water off to the street. I supposed he would understand his business, and if I were there I would say to him I will pay you no more money; you must do that work right. I forgot to say I gave him $20 in advance, as I was coming to Philada., and Mr. Wright finished the rest. I think it was $8, with the rent money. I think he has the bill, but it is paid and now, sir, will you please do what you think best. It really troubles me, because I do not know what to do; it is all I have in the world. I have been unfortunate in my life, as you, perhaps, know. I think those colored people will pay the rent. I have never seen them but once, and they show a disposition to do what is right. I lived there without the water and thought it a comfortable house. The man next door complained, but he should not have built his brick house directly beside that high ground. We never noticed his complaint. I once told them to buy it of us; then the bank could be cut away. I leave the matter all with you.

Very resp'y, A. M. ACKERMAN.

EXHIBIT A. H. No. 4.

WASHINGTON, D. C., *Ap'l* 28, 1882.

Central National bank pay to A. M. Ackerman or order three hundred dollars.

$300. E. A. Mc torn out.

Endorsed: A. M. Ackerman, E. A. McIntire.

822 EXHIBIT A. H. No. 5.

Office of Edwin A. McIntire, real-estate broker and attorney-at-law, No. 918 F street northwest.

MONDAY MORNING.

Mr. McIntire.

DEAR SIR: I have just come from my lawyer's, Mr. Moulton, and he requested that I stop and ask you to please bring over the bill of sale of that small house at 3 o'clock this afternoon.

Respectfully, A. M. ACKERMAN.

EXHIBIT A. H. No. 6.

No. 824. WASHINGTON, D. C., *April* 28, 1882.

Riggs & Co. pay to A. M. Ackermann or order twenty-six $\frac{45}{100}$ dollars.

$26.45. E. A. McINTIRE.

Endorsed: [A. M. Ackerman, E. A. McIntire.]*

[* Words enclosed in brackets erased in copy.]

EXHIBIT A. H. No. 7.

This indenture, made this sixth day of September, in the year of our Lord one thousand eight hundred and eighty-four (1884) by and between Annie M. Ackerman of the city of Washington in the District of Columbia of the first part, and Martha McIntire of the same place of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of five dollars, in lawful money of the United States, to her in hand paid by the said part- of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, quitclaimed and conveyed, and doth by these presents, grant, bargain, sell, alien, release, quitclaim and convey unto the said Martha McIntire her heirs and assigns, forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit:

All that certain piece or parcel of land known and distinguished as being lot number twenty-one (21) of Bond and Bramhall's, trustees, subdivision of original lot numbered nine (9), in square numbered nine hundred and ninety-two (992), and also all claims for damages or drawbacks by reason of "special improvements" to said property

Together, with all the improvements, ways, easements, rights, privileges, and appurtenances, to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues,
823 and profits thereof; and all the estate, right, title, interest, claim and demand, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said piece or parcel of ground

To have and to hold the said piece or parcel of land and premises and appurtenances unto the said Martha McIntire her heirs and assigns, to her and their sole use, benefit and behoof, forever.

In testimony whereof the said Annie M. Ackerman hath hereunto set her hand and seal on the day and year first hereinbefore written.

ANNIE M. ACKERMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

DISTRICT OF COLUMBIA, }
City of Washington, } *ss*:

I, William Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Annie M. Ackerman, party to a certain deed bearing date on the sixth day of September, A. D. 1884, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Annie M. Ackerman being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this sixth day of September, A. D. 1884.

WM. HELMICK, [SEAL.]
Justice of the Peace.

EXHIBIT A. H. No. 8.

Liber No. 1002, folio 348 *et seq.* Del'd to E. A. McIntire June 5, 1882. R. R.

A. M. Ackerman to E. Taylor. } Deed. Recorded April 27th, 1882, 2.20 p. m.

This indenture made this twenty-fourth day of April in the year of our Lord one thousand eight hundred and eighty-two (1882) by and between Annie M. Ackerman of the city of Washington in the District of Columbia of the first part, and Emma Taylor of the city of Philadelphia, in the State of Pennsylvania party of the second part: witnesseth that the said party of the first part for and in consideration of the sum of three hundred dollars in lawful money of the United States to her in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged hath granted bargained sold aliened enfeoffed released and conveyed, and doth by
824 these presents bargain sell alien enfeoff release and convey unto the said party of the second part her heirs and assigns forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises known and distinguished as and being lot number twenty-one of Bond and Bramhall's trustees subdivision of original lot numbered nine (9) in square numbered nine hundred and ninety-two (992) together with all the improvements ways easements rights privileges, appurtenances and hereditaments to the same belonging or in anywise appertaining, and all the remainders reversions rents issues and profits thereof, and all the estate right title interest claim and demand whatsoever either at law or in equity of the said part- of the first part of in to or out of the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said party of the second part her heirs and assigns to her and their sole use benefit and behoof forever, and the said party of the first part for herself and for her heirs executors and administrators doth hereby covenant promise and agree to and with the said party of the second part her heirs and assigns, that she the said party of the first part and her heirs shall and will warrant and forever defend the said piece or parcel of land and premises and appurtenances unto the said party of the second part her heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by from under or through her them or any of them, and against all other persons whomsoever, and further that she the said party of the first part and her heirs shall and will at any and

at all times hereafter, upon the request and at the cost of the said party of the second part her heirs or assigns make, execute and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part her heirs or assigns as the said party of the second part her heirs or assigns or her counsel learned in the law shall advise devise or require.

In testimony whereof the said party of the first part has hereunto set her hand and seal on the day and year first hereinbefore written.

ANNIE M. ACKERMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. HELMICK.

DISTRICT OF COLUMBIA, *ss:*

I, Wm. Helmick, a justice of the peace in and for the District aforesaid, do hereby certify that Annie M. Ackerman, party to a certain deed bearing date on the twenty-fourth day of April, A. D. 1882, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Annie M. Ackerman being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed; and the said
825 Annie M. Ackerman, being of full age and by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this twenty-fifth day of April, A. D. 1882.

WM. HELMICK, [SEAL.]
Justice of the Peace.

Endorsed: Fee, $1.50. This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1002, fol. 348 *et seq.*, one of the land records of the District of Columbia. Office of the recorder of deeds, Washington, D. C., March 24, 1893. Geo. F. Schayer, dep. recorder of deeds (Seal).

EXHIBIT A. H. No. 9.

In the Supreme Court of the District of Columbia, the 2d Day of March, 1894.

WM. E. MCINTIRE
vs.
EDWIN A. MCINTIRE *et al.* } Precipe. No. 10745. Eq.

The clerk of said court hereby certifies that the above-stated cause was entered dismissed by precipe of complainant Sept. 23, 1893.

[SEAL.] J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

Memorandum.

1894, December 29.—Original opinion of Justice Hagner filed. See case of Pryor *v.* McIntire, No. 12761, equity.

Memorandum.

1894, December 31.—Motion for rehearing filed.

Memorandum.

1895, January 7.—Petition for rehearing filed.

Memorandum.

1895, January 8.—Order granting rehearing on subject of laches.

826 *Decree Dismissing Bill and Amended Bill.*

Filed March 4, 1895.

In the Supreme Court of the District of Columbia.

ANNIE M. ACKERMAN *vs.* EDWIN A. MCINTIRE *et al.* } Equity. No. 12978.

This cause came on to be heard upon the bill, amended bill, answers, exhibits, testimony, and all other the proceedings, and being submitted to the court after argument by counsel for the respective parties, and after the re-argument of the same, were by the court read and considered.

It is thereupon, this 4th day of March, 1895, by the court and the authority thereof, adjudged, ordered, and decreed that the said bill and amended bill be, and the same are hereby, dismissed with costs, for which execution shall issue as at law.

A. B. HAGNER,
Associate Justice.

From the above decree the complainants take an appeal in open court, which is allowed.

A. B. HAGNER.

Memorandum.

1895, March 4.—Original opinion of Justice Hagner on rehearing filed.

See case of Pryor *v.* McIntire, No. 12761, eq.

* * * * * * *

In the Supreme Court of the District of Columbia.

ANNIE M. ACKERMAN
vs.
EDWIN A. MCINTIRE, EMMA TAYLOR, & MARTHA MCINTIRE. } No. 12978. In Equity.

The President of the United States to Edwin A. McIntire & Martha McIntire, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 4 day of March, 1895, wherein Annie M. Ackerman is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

827 Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of March in the year of our Lord one thousand eight hundred and ninety-five.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 8 day of March, 1895.

S. S. HENKLE,
Attorney for Appellees.

* * * * * * *

In the Court of Appeals of the District of Columbia, May 15th, 1895.

ANNIE ACKERMAN, Appellant,
vs.
E. A. MCINTIRE *et al.*, Appellees. } No. 467.

S. S. Henkle, sol. for appellees:

Take notice that the appellant hereby designates the following portions of the transcript of the record in the above case to be printed as necessary to the hearing of the same, to wit:

All of the transcript except so much thereof as is included in red-pencil brackets in said transcript.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
WM. W. BOARMAN,
Sol's for App'l't.

(Endorsed:) Court of Appeals, D. C., April term, 1895. No. 467. Annie M. Ackerman, appellant, *vs.* Edwin A. McIntire *et al.* Designation by appellant of parts of record to be printed. Court of Appeals, District of Columbia. Filed May 15, 1895. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 467. Annie M. Ackerman, appellant, *vs.* Edwin A. McIntire & Martha McIntire. Court of Appeals, District of Columbia. Filed May 14, 1895. Robert Willett, clerk.

828 In the Court of Appeals of the District of Columbia.

CATHERINE SOUTHEY, MARGARET COLE, & MICHAEL COHAN, Appellants,
vs.
EDWIN MCINTIRE, MARTHA MCINTIRE. } No. 468.

In the Supreme Court of the District of Columbia.

CATHERINE SOUTHEY, MARGARET COLE, and MICHAEL COHAN, Complainants,
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE, Defendants. } Equity. No. 13034.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Filed March 10, 1891.

In the Supreme Court of the District of Columbia.

CATHERINE SOUTHEY, MARGARET COLE, and MICHAEL COHAN
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE. } Equity. No. 13034, Docket 31.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainants state as follows:

1. That they and the defendants are residents of the District of Columbia, except the complainant Michael Cohan, who is a resident of the city of San Francisco, in the State of California.

2. The complainants sue in their own right. The defendant Martha McIntire is sued in her own right, and the defendant Edwin A. McIntire is sued as trustee.

3. That Cornelius Cohan, father of complainants, departed this life on the — day of ——, 18—, intestate and seized and possessed of the following-described property, viz: All that part of original lot twenty-one (21), in square seventy-seven (77), in the District
829 of Columbia, described as follows: Beginning for the same on I street seventeen (17) feet east from the northwest corner of said lot, thence east on said street eighteen (18) feet; thence south ninety (90) feet eleven (11) inches; thence west eighteen (18) feet; thence north to the point of beginning.

4. That complainants are the children and only heirs-at-law of said Cornelius Cohan.

5. That on the 28th day of December, A. D. 1876, said Cornelius Cohan being seized and possessed of said part of said lot, the defendant Edwin A. McIntire, claiming to act under and by virtue of a deed of trust executed to him by Louis Streb and Magdalena, his wife (former owners of the property), on the 12th day of December, 1872, and recorded in Liber 705, at folio 75, of the land records of the District of Columbia, made and executed, on the 28th day of December, 1876, to one George W. F. Swartzell a deed of said described real estate, the said deed having been executed by him in pursuance of a pretended sale to said Swartzell of the said real estate, the said pretended sale being made because of an alleged default in payment on the part of the maker of certain notes mentioned and described in said deed of trust of the 12th of December, 1872.

6. That complainants have only recently discovered that the said pretended sale was a deliberate fraud perpetrated by said McIntire on complainants' father, of which he was wholly ignorant during his lifetime. The facts and circumstances of said fraud *which* have only within the past ten days been discovered, the said fraud being as set forth and charged in the succeeding paragraphs of the bill of complaint.

7. Complainants on information and belief aver and charge that at the time of said pretended sale the whole of the indebtedness secured by said deed of trust had been paid and satisfied, but even if this should turn out not to be the exact fact, yet whatever there was of said indebtedness remaining unpaid was represented by the notes described in said trust, and that the said McIntire was at the time of said sale the real owner and holder thereof, and, if for none of the other reasons hereinafter mentioned, was disqualified by reason of such ownership from foreclosing and conducting said sale, and that the same was for that reason invalid and void, and they claim such benefit therefrom as they may be entitled to receive in this proceeding.

8. And complainants further state on information and belief that the said so-called sale was merely a pretended one on the part of said McIntire; that the alleged purchaser, George W. F. Swartzell, never in fact purchased said property and was not present at said sale, but that his name, as he has stated to complainants' attorney, was innocently allowed by him, he being in ignorance of the real facts of the case, to be used by said McIntire as the grantee in the deed in fee executed in pursuance of said pretended sale; that he, said Swartzell, never paid any part of the consideration mentioned in the said deed or promised to pay the same, and has never and does not now claim any interest whatsoever in said real
830 estate. The said deed of said McIntire to Swartzell is recorded in Liber 844, folio 14, of said land records and is made part hereof.

9. Complainants aver and charge that the said McIntire, trustee, was the real purchaser at said sale, the deed to said Swartzell being only used by him (McIntire) as a cloak to cover up the fraud of a trustee purchasing the property at his own sale.

10. That after the making of the deed to Swartzell, as complainants are informed and believe, the said McIntire took possession of the said real estate and proceeded to appropriate the rents, issues, and profits thereof to his own use, and has ever since continued to do so.

11. That on the 12th day of January, A. D. 1882, the said Swartzell, at the request of said McIntire, trustee, and wholly in ignorance of the fraud being perpetrated by said McIntire, signed and executed an alleged deed purporting to convey the said property in fee to one Emma Taylor, but complainants on information and belief charge and aver that there never was and is not now in existence any such person as the Emma Taylor described as the grantee in said deed; that the said name was entirely an invention on the part of said McIntire for the purpose of carrying out his fraudulent scheme to possess himself of said property by causing the title thereto to be apparently taken out of said Swartzell, in whom it had been as a part of his scheme originally placed; that the $2,000 consideration named in said deed was entirely fictitious, not a dollar having been received by said Swartzell or any one for him for executing said pretended deed, the same having been executed by him solely at the request of said McIntire, trustee, and, as before stated, wholly in ignorance of the fraud being perpetrated. The said deed of Swartzell to Taylor is recorded in Liber 992, folio 273, of said land records and is made part hereof.

12. That thereafter, viz., on the 31st day of May, 1884, the said McIntire prepared or caused to be prepared an alleged deed wherein the said pretended Emma Taylor purports to convey said property in fee to the defendant Martha McIntire. Complainants do not know how the acknowledgment to said deed was obtained, but they believe that the notary was imposed upon by some person pretending, at the instance of said McIntire, to be the Emma Taylor described in said deed. The said deed of Taylor to McIntire is recorded in Liber 1210, folio 182, and is made part hereof.

13. Complainants further aver and charge that the said pretended deeds of Swartzell to Taylor and Taylor to McIntire, even if not void for the fraud hereinbefore charged, are wholly void because of the want of a grantee and grantor in said respective deeds, and they claim such benefit on account thereof as they are entitled to receive.

13. Complainants further aver on information and belief that the consideration of $2,500 mentioned in said deed of Taylor to McIntire is wholly fictitious; that the said Martha McIntire did not pay any consideration whatever for the said alleged conveyance, but, on the contrary, the said pretended conveyance was a mere cloak to cover up the fraud of the said McIntire, trustee, who, after
831 the conveyance as before, continued to and still continues to appropriate to his own use the rents, issues, and profits of said property in fraud of complainants.

14. That complainants do not know whether the said Martha McIntire claims any interest in said property or not, nor do they know whether she had actual knowledge of the fraud of her brother, the said McIntire, trustee, but complainants claim the benefit of any

facts which may be hereafter developed in this cause in respect of said matter. Complainants, however, aver and charge that even if the said Martha had no actual knowledge of the fraud of her brother in respect of said property, she had full constructive knowledge and notice thereof, and is not a purchaser for value.

15. Complainants are therefore advised that all of the said deeds, beginning with that of said McIntire to Swartzell, are fraudulent and void as against complainants, and that they should be so declared by this court.

The premises considered, complainants pray—

Prayers.

1. That the defendants be required to appear and answer the exigency of this bill.

2. That the said deed of trust from Strebs to McIntire, trustee, be declared satisfied and the said trustee be directed to execute to complainant a release thereof.

3. That the said deed from McIntire, trustee, to Swartzell, and from Swartzell to Taylor, and from Taylor to Martha McIntire be declared null and void.

4. That an account be had of the rents, issues, and profits of said property received by said McIntire, trustee, or which might have been received by him, and that a personal decree be rendered against him in favor of complainants for the amount found due.

5. That complainants may have such further and other relief as to the court may seem just and proper and the nature of the case may require.

The defendants to this bill of complaint are Edwin A. McIntire and Martha McIntire.

FRANKLIN H. MACKEY &
WM. W. BOARMAN,
Sol's for Compl'ts.

832 Filed May 5, 1891.

In the Supreme Court of the District of Columbia.

CATHERINE SOUTHEY, MARGARET COLE, and MICHAEL COHAN
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE.
} Equity. No. 13034, Doc. 32.

The Joint Answer of Defendants Edwin A. McIntire and Martha McIntire.

1, 2. We do not know the complainants; we never heard of them until the filing of the bill in this cause, and we do not now know if there are such persons in existence, and we therefore deny the allegations made in reference to the complainants and their residences.

3. We do not know whether Cornelius Cohan is dead or alive,

nor do we know that he was the father of the complainants; we therefore deny those allegations.

We deny upon information and belief that said Cohan was ever the *bona fide* owner of the lot described, and that he ever paid any consideration for the same or received any of the rents thereof, but the property was placed in his name to protect it from certain judgments.

4. We know nothing of the truth of the allegations in paragraph 4 of the bill, hence we deny them.

5. We deny that Cornelius Cohan was the owner of the lot, but we admit that defendant E. A. McIntire, as trustee, offered the property for sale on account of default in payment of notes secured under the trust from Louis and Magdalena Streb (former owner of the property); that as said trustee he advertised the property upon the written request of the defendant Martha McIntire, the holder of the notes, and that the property was knocked down by the auctioneer to G. W. F. Swartzell, who assigned his purchase to said defendant, Martha McIntire.

We deny that the sale was only a pretended sale, as alleged, or that anything irregular was done in connection therewith.

6. We deny that said sale was a fraud and that any facts or circumstances of a fraudulent nature have come to the knowledge of the complainants, as alleged.

7. We deny the whole of the indebtedness was satisfied at the time of the sale and that defendant E. A. McIntire was the holder or owner of the notes or any of them. The notes were owned and held by Martha McIntire, and because they were not paid she ordered the sale.

8. We deny that said sale was merely a pretended one, and we deny the other allegations in paragraph 8 of the bill. The property was knocked down by the auctioneer, Joseph T. Coldwell, to G. W. F. Swartzell, and, as he (Swartzell) declined to take it, he immediately assigned his purchase to the defendant Martha McIntire,
833 who, as before stated, was the holder of the notes and had given written instructions to sell and a written request to have the property transferred to her if no one bid above the amount of her loan and the costs.

9. We deny that defendant E. A. McIntire was the real purchaser or that he had any interest therein, and we deny that the deed to Swartzell was used as a cloak to cover up any fraud whatever.

10. We deny all the allegations made in the 10th paragraph of the bill.

11 & 12. We admit that Mr. Swartzell did convey the property to Emma Taylor, but we deny that it was done at the request of E. A. McIntire. It was reported to said Swartzell that the person examining the records had found the title in his (Swartzell's) name and had prepared a deed from him (Swartzell) to Taylor; that the deed from Swartzell to Martha McIntire had not been recorded, and it was suggested by Swartzell or Coldwell, the auctioneer (who was then engaged in the same office with Swartzell), that the deed to Martha McIntire might be cancelled and that Swartzell could then

make a deed direct to Emma Taylor. The consideration could be turned over to Martha McIntire, and this plan would save the expense of preparing and recording another deed. This course was then pursued; but we are now advised that the deed from Swartzell to Martha McIntire having been duly executed, acknowledged, and delivered, and the said Martha McIntire having made no conveyance thereof, the title is still in Martha McIntire, irrespective of subsequent transfers by Swartzell to Taylor and by Taylor to said Martha McIntire, as recited in the bill.

We deny the allegation that there never was such a person as Emma Taylor and that the name was an invention of the defendant E. A. McIntire, and that said defendant, E. A. McIntire, was scheming to possess himself of the property.

We deny that the consideration mentioned in the deed was fictitious, and we deny that any fraud was perpetrated upon any one in these transactions.

We acknowledge that subsequently the said Taylor conveyed to defendant Martha McIntire, but we deny that any imposition was practiced upon the notary, as alleged, or that the acknowledgment was procured in any way except the usual legitimate course: the grantor going in person before the justice of the peace and there signing and acknowledging the deed.

13. (Two paragraphs are numbered 13.)

We deny all of the allegations in both paragraphs marked 13.

14. We deny the allegations in paragraph 14. The complainants or their solicitors could easily have ascertained, if they desired, that the defendant Martha McIntire did and does now claim to be the rightful and the only owner of the entire premises. She knew of no fraud when she made the purchase, and she and her codefendant do not now know of any fraud whatever nor do they know of any irregularity or unfairness in connection with the property. Defendant Martha McIntire was a purchaser in good faith for value.

She has kept the property in repair and paid the taxes, and
834 she claims to be as fully and completely the owner as it is possible for a person to be.

15. We deny that any of said deeds are fraudulent or that any wrong (even the slightest) was done by these defendants or either of them in connection with this property.

EDWIN A. McINTIRE.
MARTHA McINTIRE.

S. S. HENKLE, *Sol'r.*

We do solemnly swear that we have read the answer by us subscribed and know the contents thereof, and that the facts therein stated upon our personal knowledge are true and those stated upon information and belief we believe to be true.

EDWIN A. McINTIRE.
MARTHA McINTIRE.

Subscribed and sworn to before me this 5th of May, 1891.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS, *Ass't C'lk.*

Replication.

Filed May 23, 1891.

* * * * * * *

Complainants' Testimony.

Filed Apr. 18, 1894.

* * * * * * *

Catharine Southey.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. You are one of the complainants in this suit?
A. Yes, sir.
Q. What was your father's name?
A. Cornelius Cohan.
Q. Is he dead?
A. Yes, sir; he died in May, eight years ago—that is, in 1883.
Q. How many children did he leave surviving him?
A. Three—Michael Cohan, living in San Francisco, California; Mrs. Margaret Cole, living in Georgetown, D. C., and myself, living also in Georgetown.
Q. You and your sister and brother have filed this bill to set aside a sale and alledging certain charges of fraud against Mr. McIntire in regard to that sale. You may state when you first learned of the facts and when.
A. I learned the facts from my husband about the time this bill was filed.

835 Cross-examination.

By Mr. HENKLE:

Q. Did you learn them from anybody else?
A. No, sir.

CATHERINE SOUTHEY.

* * * * * * *

John Southey.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. You are the husband of the preceding witness, Catharine Southey, and the brother-in-law of these other complainants?
A. Yes, sir.
Q. You, I believe, were the original owner of this property on I street, being part of lot 21, in square 77?
A. Yes, sir.

Q. And also the owner of property on the corner of 19th and R streets northwest?

A. Yes, sir.

Q. Do you know Edwin A. McIntire?

A. Yes, sir; I have had dealings with him.

Q. You may state the first business transaction you had with Mr. McIntire.

A. I think it was in 1871, through B. H. Warner & Co., when I borrowed $2,600; $2,100 first and $500 afterwards.

Q. Do you know Mrs. Magdalene Streb; if so, did you ever have any dealings with her?

A. Yes, sir; I sold her the house on I street, part of lot 21, in square 77, for $2,500. She paid me $300 cash and gave me eight notes for $275 each, making $2,200, and I sold the notes to Mr. E. A. McIntire.

Q. Did you ever execute a deed of trust to Mr. McIntire upon your R Street property to secure those notes?

A. Yes, sir.

Q. That is to say, you gave him those eight notes (we will call them the Streb notes for identification) which were secured first on the I Street property?

A. Yes, sir; and then I gave him a second deed of trust on the R Street property as additional security for the $2,200, so that those notes were secured upon two pieces of property.

Q. It is of record among the land records of the District of Columbia that on the 8th of August, 1873, you executed a deed of trust to E. A. McIntire to secure $1,000 in four notes of $250 each. Do you remember what that trust was given for?

A. Well, when I sold Mr. McIntire those $2,200 of notes I took up $1,000 of notes on the R Street property.

Q. When you sold the Streb notes to Mr. McIntire what did he give you for them?

836 A. He gave me one of my own notes for $1,000 and $325—that is, one of the notes on the R Street property that I had borrowed from him in 1871.

Q. That left $1,100 due on the R Street property?

A. No; there was a $500 trust after that; that left $1,600 due after taking up the $1,000.

Q. When that note of August 10th, 1871—the record shows that was the date of that first deed of trust for $2,100—when the $1,000 note became due on that trust, how did you pay it?

A. Well, I believe I renewed it, to the best of my knowledge.

Mr. HENKLE: On which property?

Mr. MACKEY: On the R Street property.

Q. What do you mean by renewing it—that is, you gave another deed of trust?

A. Yes, sir.

A. There is a trust dated August 8, 1873, from you to E. A. McIntire, recorded in Liber 729, at folio 1——

WITNESS (interposing): For how much?

Q. (Continuing): For $1,000. That is just two years lacking two days after you executed the $2,100 trust. What was that trust given for?

A. It was given to take up the old deed of trust. I never owed only that amount of money, $1,600, to Mr. McIntire. That was on the R Street property.

Q. After you got this $2,600 from Mr. McIntire did you ever get any more money except the $300?

A. That is all; the $2,600 and the $300 cash; of course, I took up my note at the time.

Q. There is of record a deed of trust executed by you to E. A. McIntire, dated September 4, 1874, and recorded in Liber 758, at folio 153, to secure Henry McIntire $600 in two notes of $300 each?

A. That was to take up the $500 deed of trust which was given. I know well that is all the money I owed him, and I renewed those notes.

Q. And then there was a deed of trust dated October 10, 1874, about six weeks afterwards, to secure three more notes of $200 each to Henry McIntire. Do you remember what that was for?

A. No, sir; unless it was to take up the Streb notes. I did not owe him anything except on the R Street property $1,600 at that time.

Q. You stated that you never got any more money at that time?

A. No, sir; I did not get any more.

Q. Do you know Mr. Frank Hume?

A. Yes, sir.

Q. Did you ever execute a deed of trust to him?

A. Yes, sir.

Q. You may state the circumstances under which you executed the trust to him.

A. I gave the trust to settle up my indebtedness; that is
837 the way I understood it, that it was to square up the indebtedness on the I Street and the R Street properties.

Q. What was your business at that time?

A. I was in the grocery business.

Q. Did you owe Mr. Hume a bill at that time?

A. Yes, sir.

Q. You must have taken up the indebtedness on the I Street and R Street properties. Did you make another deed of trust on the I Street and R Street properties?

A. Yes, sir.

Q. How many of the Streb notes were due at the time of the transaction with Mr. Frank Hume?

A. I think three.

Q. How did you come to state to your wife the facts alleged in this bill?

A. Well, I happened to see in the paper something about Mr. McIntire, and I came to you and asked you to look it up and see if there was anything wrong.

Mr. MACKEY: I here offer in evidence the record of a deed of

trust by John Southey to Warner & Stickney, trustees, dated August 10, 1871, and recorded in Liber 654, at folio 457.

Also the record of a deed of trust by John Southey to Warner & Stickney, trustees, dated October 7, 1871, and recorded in Liber 659, at folio 337.

Also the record of a deed in fee by John Southey and wife to Magdalene Streb, dated December 12, 1872, recorded in Liber 705, at folio 57, and conveying the property described in this bill, to wit, part of lot 21, in square 77.

Also the record of a deed of trust by Louis Streb and wife to E. A. McIntire, trustee, dated December 12, 1872, and recorded in Liber 705, at folio 75, conveying the same property to secure eight notes, payable in 6, 12, 18, 24, 32, 38, 42, and 48 months, for $275 each.

Also the record of a deed in fee by Louis Streb and wife to John Southey, dated May 25, 1875, and recorded in Liber 785, at folio 343, reconveying the property described in this bill, to wit, part of lot 21, in square 77.

Also the record of a deed of trust by John Southey and wife to George C. White, dated July 7, 1875, and recorded in Liber 789, at folio 233, conveying the property described in the bill, and also the property at the corner of 19th and R streets, mentioned by the witness John Southey in his testimony, to secure Frank Hume in the sum of $5,200.

Also the record of a deed in fee by John Southey and wife to Cornelius Cohan, dated October 14, 1876, and recorded in Liber 834, at folio 103, conveying the property described in the bill.

Also the record of a deed in fee by E. A. McIntire to George W. F. Swartzell, dated December 28, 1876, and recorded in Liber 844, at folio 14, conveying the property described in the bill.

Also the record of a deed in fee by George W. F. Swartzell
838 to Emma Taylor, dated January 12, 1882, and recorded in Liber 992, at folio 237, conveying the property described in the bill.

And also the record of a deed in fee by Emma Taylor to Martha McIntire, dated May 31, 1884, and recorded October 14, 1886, in Liber 1210, at folio 182, conveying the property described in the bill.

All of which are among the land records of the District of Columbia; and solicitors for complainant give notice to the solicitor for the defendant Edwin A. McIntire that they will, on the hearing of this cause, read to the court from said records as often as may be necessary.

Mr. HENKLE: I object to the offer of these records, as none of them are produced nor copies thereof given in evidence. It is impossible for me to know the contents of these records without going to the office of the recorder of deeds and making an examination of them; and it does not appear for what purpose they were offered nor that they are connected with the issues in this case, while it is manifest that they have no relation to the case, and as testimony they are incompetent. Either the records themselves should be produced, so that they may be inspected and the contents of the

papers ascertained, or certified copies from the records should be produced.

Whereupon the witness JOHN SOUTHEY further deposes and says:

By Mr. MACKEY:

Q. Have you, Mr. Southey, any of the originals of the deeds which have been referred to?
A. No, sir.
Q. Do you know where they are?
A. No, sir; unless they are of record in the city hall.
Q. I show you the original of the deed of trust from yourself and wife to George C. White, dated July 7, 1875, and recorded in Liber 789, at folio 233. Is that your signature to it?
A. Yes, sir.
Q. That is the trust to secure Frank Hume?
A. Yes, sir.
Q. It is signed by Mary Southey?
A. Yes, sir.
Q. She was your first wife?
A. Yes, sir.
Q. Is she dead?
A. Yes, sir.
Q. Is that her signature to that deed of trust?
A. Yes, sir.

Mr. MACKEY: I now give in evidence that original deed of trust.
Mr. HENKLE: To the admission of which I object as being irrelevant to the issues in this case.

839 (NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 1.)

Mr. MACKEY: I here give in evidence the original of a deed of release from Edwin A. McIntire to John Southey, dated July 9, 1875, and recorded in Liber 789, at folio 352.
Mr. HENKLE: To the admission of which I object as being irrelevant to the issues in this case.
Mr. MACKEY: You admit that this is the original?
Mr. HENKLE: I admit that the paper is signed by the defendant Edwin A. McIntire, and that it is genuine; but I object to it as being irrelevant and incompetent.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 2.)

JOHN SOUTHEY.

* * * * * * *

(Southey's cross-examination on page 27.)

George W. F. Swartzell.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. How old are you now?
A. Thirty-four years of age.
Q. What is your business?
A. Real-estate broker of the firm of B. H. Warner & Co.
Q. The land records of the District of Columbia show that on the 28th day of December, 1876, a conveyance was made to you by Edwin A. McIntire, trustee, of part of lot 21, in square 77, for the consideration of eleven hundred and odd dollars, the deed being recorded in Liber 844, at folio 14. You may state whether you paid the consideration mentioned in that deed for that property.
A. I did not.
Q. Had you at any time any interest in that property?
A. None.
Q. You never claimed any interest in it?
A. No, sir.
Q. You may state, if you remember, how that deed came to be executed to you.
A. The property, as I understood, was put up at auction and was bid off to me at the auction sale.
Q. Were you present at the sale?
A. I was not.
Q. Do you know who bid for you at that sale?
A. I do not.
Q. Subsequent to that there appears of record in Liber 992, at folio 273, of the land records of the District of Columbia, a deed dated January 12, 1882, by which you purport to convey the
840 property mentioned to one Emma Taylor. You may state if you ever received anything for that conveyance.
A. Nothing.
Q. How did you come to make it?
A. I made it, as I remember, at the request of Edwin A. McIntire.
Q. Did you ever see Emma Taylor?
A. Not to my knowledge.
Q. Do you remember ever seeing Emma Taylor before or since that time?
A. I have no recollection of having seen her.

Cross-examination.

By Mr. HENKLE:

Q. Who was the auctioneer?
A. I do not remember, but I think it was Mr. Coldwell.
Q. Were you and Mr. Coldwell and Mr. McIntire all then in the firm of B. H. Warner & Co.?

A. We were in the office. Mr. McIntire was in the firm, but Mr. Coldwell and myself were employees.

Q. But you were all associated together in the same business?

A. Yes, sir; and in the same business house.

Mr. MACKEY: You do not mean that you were associated as partners?

WITNESS: No, sir.

Q. Mr. Coldwell was an auctioneer and did the auction business for that firm?

A. Yes, sir.

Q. Do you know whether or not it was customary where property was sold by Mr. Coldwell under deeds of trust by the order of the holders of the notes for the auctioneer to knock down the property to somebody in the office?

A. I am not able to state what the custom was, but I believe it was sometimes done.

Q. Do you know who was the holder of the notes that were secured by the deed of trust under which this property was sold?

A. I do not. I had no knowledge of the transaction.

Q. You transferred the property on the same day that you took your deed, did you not, to Martha McIntire?

A. Yes. sir; I believe I did.

Q. How, do you know how it came that subsequently you made a deed to Emma Taylor?

A. My recollection is that the first deed was shown to me unrecorded, and I then canceled my signature to it and executed a new deed to the party.

Q. I do not understand you to say that you never did see Emma Taylor, but that you do not know that you ever saw her?

A. I do not know that I ever saw her.

Q. You may have seen her?

A. What I mean to say is that I do not now recall Emma Taylor.

841 Redirect.

By Mr. MACKEY:

Q. You say that Mr. Coldwell was the auctioneer. Do you know that of your own knowledge or from hearsay?

A. Of my own knowledge.

Q. Were you at the sale?

A. I was not at the sale.

Q. How do you know, then, that he was the auctioneer at the sale?

A. Because I was informed the next morning by Mr. Coldwell.

Q. Then you know it by hearsay?

A. Yes, sir.

Q. When you made the deed to Martha McIntire did you ever receive anything from her for making the conveyance to her?

A. Nothing.

Q. Did you receive anything when you made the cancellation of that deed?
A. Nothing.
Q. So that in this matter all the way through you never received a dollar or claimed a dollar's interest in the property?
A. No, sir.
Q. When you made this deed to Emma Taylor was any woman present at all?
A. I saw none.
Q. Who brought the deeds to you to be executed?
A. Mr. E. A. McIntire, as I recollect.

Recross.

By Mr. HENKLE:

Q. Have you any distinct recollection about what transpired at the time?
A. I have not, except that I executed the deeds at the request of Mr. McIntire.
Q. That is all the definite recollection that you have about the matter?
A. Yes, sir; I had no interest in the transaction, and I did not charge my memory with the details.
Q. As to the circumstances and all that, you do not have any distinct recollection about?
A. No, sir.

Redirect.

By Mr. MACKEY:

Q. You have a definite recollection that you never received any money or paid any money?
A. I have a definite recollection that I neither paid nor received any money in the transaction.

GEO. W. F. SWARTZELL.

842 Subscribed and sworn to before me this 20th day of July, 1891.

ALBERT HARPER, *Examiner.*

(Adjourned to —.)

JULY 27, 1891.

* * * * * * *

JOHN SOUTHEY, who further deposes and says, being recalled for—

Cross-examination.

By Mr. HENKLE:

Q. Did you own the property at the corner of 19th and R streets and No. 2112 I street northwest at the same time?
A. Yes, sir.
Q. Mr. Mackey has put in evidence or referred to the record of a

deed of trust dated October 7, 1871, and said to be recorded in Liber 659, folio 337, to Warner and Stickney, to secure B. H. Warner in the sum of $500 three years after date. What property was that on?

A. 19th and R streets.

Q. What was that for?

A. For money borrowed.

Q. From whom?

A. From B. H. Warner, I believe; through him, I understood.

Q. Had Mr. McIntire anything to do with that?

A. Well, I understood that he was the one who loaned the money.

Q. You mean that it was his money?

A. Yes, sir; I was to pay him the interest and he was to give me receipt for it.

Q. On that loan?

A. Yes, sir.

Q. Was not Mr. McIntire at that time associated with Mr. Warner?

A. No, sir; I do not believe he was at that time.

Q. Why was this note made to B. H. Warner?

A. I got this money through B. H. Warner if I am not mistaken.

Q. You say that it was Mr. McIntire's money?

A. I supposed so. I got it through Mr. Warner.

Q. Was not Mr. McIntire associated with Mr. Warner in business at that time?

A. No, sir; Mr. McIntire was a clerk in the War Department; I think so, for that is where I used to see him.

Q. Why was not the note made to Mr. McIntire if it was his money?

A. I do not know. The note was made to Warner, but I always thought it was made to McIntire.

Q. The deed recites that it is made to secure B. H. Warner. Is that true or not?

A. Well, I got the money from B. H. Warner.

Q. Was it not his money?

843 A. That I could not say.

Q. Why do you say it was Mr. McIntire's money?

A. Because I was to pay him the interest.

Q. Was not that afterwards when he was in Mr. Warner's office?

A. Not at the time I went to Mr. Warner to pay him the interest, and he referred me to Mr. McIntire.

Q. Was he not then in his office?

A. No, sir; I went to B. H. Warner to pay him the interest on this money, and he referred me to Mr. McIntire.

Q. When you borrowed that money did you not suppose that you were borrowing it from Mr. Warner?

A. Well, I supposed—I did not know from whom I was borrowing it; I thought it came through Mr. Warner or somebody.

Q. You knew that you gave the note to Mr. Warner for it?

A. I supposed so.

Q. You did not know Mr. McIntire in connection with it at that time?

A. Not until I went to pay him the interest.

Q. You say that Mr. McIntire was not then in the office of Mr. Warner?

A. Not that I remember.

Q. You say positively that he was not?

WITNESS: That is the first deed of trust for $500?

Mr. HENKLE: Yes.

A. I do not think he was in B. H. Warner's office at that time.

Q. Did Mr. Warner tell you that Mr. McIntire owned the note?

A. Well, I went to him to pay the interest when it was due, and he referred me to Mr. McIntire. He told me to go to Mr. McIntire and pay the interest, and, if I am not mistaken, I went and paid him at the War Department.

Q. Did Mr. McIntire, at the time you paid him the interest, tell you that it was his note?

A. No, sir.

Q. The only way that you inferred that it was his note was by Mr. Warner referring you to him to pay the interest?

A. Yes, sir.

Q. Did Mr. McIntire collect money for Mr. Warner when he (McIntire) was in the War Department?

A. I do not know.

Q. Do you not know that he did?

A. No, sir; I do not.

Q. You had some pecuniary transactions with Mr. McIntire, had you not?

A. Yes, sir; I had several transactions with him.

Q. In which you gave deeds of trust upon the R Street and the I Street properties?

A. Well, I gave him a deed of trust for $2,100 on the R Street property, and this deed of trust for $500.

Q. This deed of trust which you have just been speaking about?

A. Yes, sir.

844 Q. That you did not give to him?

A. Well, he got that deed of trust the same as he got the $2,100 deed of trust. The $2,100 was got through Warner, and the $500 was got through Warner.

Q. Did you give Mr. McIntire a deed of trust on the R Street and the I Street properties for $2,200, dated December 12th, 1872, to secure the Streb notes?

A. I gave him a deed of trust on the R Street property to secure the payment of the Streb notes.

Q. That was dated December 12th, 1872?

A. Yes, sir; when I sold the notes to Mr. McIntire.

Q. That was to further secure the notes?

A. Yes, sir; they were already secured by deed of trust from Streb on the I Street property.

Q. Did you give him a deed of trust for $1,000 on the 8th of August, 1873, on the R Street property?

A. Yes, sir; in transferring these $2,200 notes over to Mr. McIntire I took up a note of $1,000 (I do not know whether it was a note of $1,000 or cash) of my own on the R Street property.

Q. Out of the proceeds of the $2,000?

A. Yes, sir—that is, he gave me back $1,000 of notes on the R Street property.

Q. Was that at the same time?

A. The same time that I transferred him the $2,000.

Q. When did you sell to Mr. McIntire the Streb notes?

A. I sold them two or three days after they were made.

Q. Well, at the same time you made this deed of trust to him to further secure them on the R Street property you sold him the Streb notes?

A. Yes, sir—that is, this extra deed of trust to secure the payment of them; that was the time I sold him those notes.

Q. You say at that time you took out of the proceeds of the $2,000 the $1,000 to take up this $1,000 note?

A. Yes, sir; on the R Street property.

Q. And he took that out of the $2,200 which was coming to you?

A. I sold him the $2,200 of notes and he gave me a $1,000 note or notes on the R Street property and $325 in cash.

Q. You say that was this $1,000 deed of trust which is dated August 8th, 1873?

A. Well, if I remember aright, that left a balance on the deed of trust which then became due, and I believe I gave him another deed of trust to secure that.

Q. This deed of trust seems to be dated August 8th, 1873. The other transaction was on the 12th of December, 1872. This is several months afterwards when you gave him a deed of trust for $1,000, which on the face of it is to secure M. P. King in four notes of $250 each, payable in one year at ten per cent. interest——

WITNESS (interposing): What is the date of that?

Mr. HENKLE: August 8th, 1873.

845 Q. (Continuing:) How do you account for that; do you mean to say that is the same transaction?

A. If I am not mistaken that is the time I renewed the balance.

Q. Well, this deed of trust of August 8th, 1873, is made to secure four notes of $250 each to M. P. King?

A. If I gave him those notes that was to take up what was on the R Street property. There was $1,100 then due on that property and, if I am not mistaken, I renewed that balance.

Q. Was there $1,000 on that property to secure M. P. King?

A. I do not know. All I got from Mr. McIntire was $2,600.

Q. What explanation have you to make of this deed of trust which appears upon record as dated August 8th, 1873, from you to Mr. McIntire to secure M. P. King four notes of $250 each for one year at ten per cent. interest?

A. I do not know of any deed of trust that I gave him, only for taking up that balance due on the R Street property.

Mr. HENKLE: This could not be that, because it was seven months afterwards.

Mr. MACKEY: No; it was just the same date.

WITNESS: I know that I gave him a deed of trust then.

Q. Have you any other explanation to make than you have already given?

A. Only that I gave him that deed of trust to take up the balance that was then due on the R Street property.

Q. You stated a moment ago that you took up that note out of the proceeds of the $2,200 of notes which you turned over to Mr. McIntire?

A. No, sir; not that note. There was $2,600 on the R Street property; there was first a deed of trust for $2,100 and then a second deed of trust for $500, and I took up a $1,000 note out of the $2,100, and that left $1,100 on the property.

Q. Was that trust, that $1,000 note, on the property?

A. Certainly it was on the property.

Q. You say that there was a deed of trust for $2,100. To whom was that due?

A. I got it through B. H. Warner and I used to pay Mr. McIntire the interest.

Q. There was $2,100 on it and then the $500 note that we have been talking about before?

A. Yes, sir.

Q. That was already on it?

A. This $2,600 was all on that property.

Mr. HENKLE: We are talking about that property and nothing else now.

Q. You say that you sold to Mr. McIntire the Streb notes, and that he retained $1,000 and gave you a $1,000 note which was on the R Street property and paid you the difference in money?

A. Yes, sir—that is, he gave me back a $1,000 note and $325 in cash.

846 Q. What was that $1,000 note?

A. Part of the $2,100 on the R Street property.

Q. It could not have been these notes, for they were made in August, 1873, six or seven months afterwards.

A. That left $1,100 on the property, and then the $500 note besides that.

Q. Then there was more than $2,100 and $500 on that property.

A. No, sir; I never got any more than $2,600 from Mr. McIntire.

Q. Did you make this deed of trust of August 8th, 1873, to secure M. P. King four notes of $250 each, payable in one year at ten per cent.?

A. As I said before, that was to secure that old deed of trust of $2,100; there was that much left on it, and I gave him an extra deed of trust to take up the old one, and, if I am not mistaken, the deed of trust was for two years.

Q. Then that transaction was not closed at that time?

A. There was a balance left under that deed of trust of $1,000 or $1,100, or whatever it was.

Q. Then it was not all taken up when you gave him the Streb notes?

A. No, sir; because a balance of $2,100 was due on it.

Q. What did he pay you?

A. He gave me a $1,000 note and $325 in cash.

Q. And it left $1,000 besides?

A. That left about $1,100 on the R Street property?

Q. At the time you made this transfer of the Streb notes?

A. Yes, sir.

Q. You say that afterwards, in August, 1873, in order to satisfy that indebtedness you made four notes, payable to M. P. King, of $250 each, and gave Mr. McIntire a deed of trust on the R Street property?

A. I do not know about M. P. King, but I know I renewed that $1,100.

Q. Do you know anything about this?

A. About what?

Q. You say that this deed of trust, if there was such a deed of trust—will you look at that and see whether that is your signature?

A. Yes, sir.

Q. That is your wife's signature?

A. Yes, sir.

Q. Look at the face of that paper and tell us what it was for.

A. Well, as I said before, that is a deed of trust that I gave Mr. McIntire to secure the payment of the balance, to take up the balance of the deed of trust of $2,100, for I know that I never received any money from Mr. McIntire, never received a dollar from him, only the $2,600 on the R Street property.

Q. That is all you have to say about that?

A. Yes, sir; I did not owe him any money at that time only what was on the property.

(NOTE.—Said deed of trust to secure M. P. King four notes
847 of $250 each, dated August 8, 1873, is here marked for identification J. S. No. 1.)

Q. Did you make a deed of trust on the 4th of September, 1874, to Edwin A. McIntire to secure Henry McIntire three notes of $200 each, payable in one year at ten per cent., on that R Street property?

A. I gave him a deed of trust to take up that $500 note; but I never received any money from Mr. McIntire, that I am positive of, only the $2,600.

Q. Is that your signature to that paper?

A. Yes, sir.

Q. Is that your wife's signature?

A. Yes, sir.

Q. Did you acknowledge that deed of trust?

A. Yes, sir; that is our deed of trust, but I never received any money for that.

(NOTE.—Said deed of trust is here marked for identification "J. S. No. 2.")

Q. You said a moment ago in this transaction with Mr. McIntire of December 12th, 1872, when he took the Streb notes from you, that you then took up this $500 note?

A. No, sir; I did not say $500 note, but a $1,000 note.

Q. Did you not say that you took up a $1,000 note and the $500 note?

A. No, sir; I said a $1,000 note.

WITNESS: You mean on this deed of trust?

Q. Did you not say that you took up a $1,000 note and the $500 note?

A. No, sir; I said a $1,000 note. I took up this first deed of trust for $500 with this second one—that is, the $2,100, and then I got a $1,000 note and $325 in cash.

Q. You took up that first note of $500, did you, at the time of the transaction of the Streb notes?

A. No, sir; I took up then a $1,000 note.

Q. Did you not say that you took up the $500 note when you made this transaction?

A. With that second deed of trust?

Q. Did you not say that you took up that $500 note at the time out of the proceeds of the Steb notes?

A. No, sir; I said I took up a $1,000 note.

Q. Did you not say that you took up that $500 note, too?

A. No, sir; I do not remember saying it.

Q. Now, you say that this $600 of September 4, 1874, was to take up that first note of $500, payable to B. H. Warner and dated October 7th, 1871?

A. That is what it was for. I never received any money from Mr. McIntire; no doubt about that; I never received any money from Mr. McIntire, and I never owed him any more money.

Q. You say that these three notes to Henry McIntire of
848 September 4, 1874, was to take up that note to B. H. Warner made on October 7th, 1871?

A. That is what it was for; no doubt about that, because I never received any money from him.

Q. You swear to that, do you?

A. That is what I am saying. I never received any money from him; not that I remember of.

Q. Did you on October 10th, 1874, get $600 more from E. A. McIntire or Henry McIntire and make three notes of that date for $200 each, payable in one year from date, bearing interest at the rate of ten per cent. per annum?

A. No, sir; I do not remember receiving any more money from Mr. McIntire than $2,600. That I remember.

Q. You did not get any money on October 10th, 1874, and make a deed of trust to Edwin A. McIntire to secure Henry McIntire three notes for $200 each, payable in one year at ten per cent. per annum?

A. I do not remember receiving any money from Mr. McIntire on that deed of trust.

Q. Will you look at that paper and say whether that is your signature?

A. That is my signature. I do not remember receiving any money on that.

Q. Was that to take up that $500 note?

A. No, sir.

Q. What was it for?

A. I do not now remember. I have no recollection of receiving any money from Mr. McIntire on that deed of trust.

Q. You say that you did not?

A. I do not remember.

Q. You swear that you did not?

A. Well, I do not think I did.

Q. How can you explain this deed of trust dated a month and six days after the former one for $600?

A. I must have taken that deed of trust and given it to take up the Streb notes. I never got any money from him that I remember, except the $2,600.

Q. Can you make an explanation of it?

A. That is the explanation that I give, unless I gave him that to take up the Streb notes.

Q. Do you say that you did?

A. I do not know that I can swear to that. I know very well that I received no more money from Mr. McIntire than $2,600.

(NOTE.—Said deed of trust is here marked for identification "J. S. No. 3.")

Q. Do you remember getting a loan from Frank Hume of $5,000 on the R Street property?

A. Yes, sir.

Q. When was that?

A. Some time in 1875, I think it was.

849 Q. What did you do with the money that you got from Mr. Hume?

A. Well, it was a transaction between Mr. McIntire and Mr. Hume. I owed Mr. Hume some money and what Mr. McIntire said I owed him, and they fixed it between them, thinking Mr. Hume was an honest man and had done what was right, and I fixed it up that way.

Q. Did you give Mr. Hume a deed of trust on the R Street property?

A. Yes, sir.

Q. Did Mr. Hume take up the encumbrances existing at that time on the R Street property?

A. Yes, sir; I understood that he took them all up on the I Street property, too. That was the impression I had all along.

Q. Do you know what he paid Mr. McIntire at that time?

A. I believe he paid him something like $3,400.

Q. Was it not $4,400?

A. No, sir; it was $3,400.

Mr. HENKLE: You are right. I made a mistake.

Mr. MACKEY: You have been making mistakes all along and he has been right.

Q. Mr. Southey, what was the amount of the Streb notes—I mean each note?

A. $275 each.

Q. At the time you made this transaction with Mr. Hume how many of the Streb notes were unpaid?

A. I could not tell exactly how many were unpaid.

Q. Were there not three notes outstanding—not paid—not yet due?

A. Not that I know of. I always thought Mr. Hume took them up and paid them.

Q. Did you understand that Mr. Hume took up the notes not yet due?

A. He settled with Mr. McIntire, and I thought he took them all up, but I found out that I was mistaken, and Mr. Hume thought they were all paid, too.

Q. You found out afterwards that you were mistaken and that they were not paid?

A. No, sir; I had thought all along that they were taken up by Mr. Hume, but when Mr. McIntire went to sell I found out that they were not—that is, by what Mr. McIntire said afterwards.

Q. That three of the notes were not taken up by Mr. Hume?

A. He did not say anything about how many. He said there was an indebtedness on the house.

Q. Did you know who held those three notes?

A. I did not know, only that I supposed Mr. McIntire held them.

Q. Did you not know that they were held by Martha McIntire?

A. No, sir.

Q. What was your information about that?

850 A. Well, I used to pay the interest and principal to him.

Q. Did you not know that they belonged to some member of his family?

A. Not that I knew of. I always thought they belonged to him, but they might have belonged to them, for what I knew.

Q. Did you not know at that time that the first of those three notes which were not due would not be due for six months after that settlement with Mr. Hume?

A. No, sir; I always had an idea that Mr. Frank Hume took up all those notes by the amount he paid, because I did not think there was so much money due on the R Street property, and I thought if he paid $3,400 he must have taken up the whole indebtedness.

Q. Did you bring an equity suit against Frank Hume in October, 1876?

A. I did.

Q. What was that for?

A. I always had an idea that I gave him a deed of trust for too much money the first time, and I thought there was a mistake some way.

Q. Was it not to set aside that sale?

A. Yes, sir; I believe I had a suit before that to set aside the sale. I always thought that he paid Mr. McIntire too much money, as he claimed those notes were due when he paid him, and I thought he must have paid him all the notes for the amount of money, because I knew that I did not owe Mr. McIntire all the money he paid him.

Q. Will you be kind enough to look at that paper and state whether that is a copy of a paper filed in that suit in question against Frank Hume and which purports to be a statement of the monies due to E. A. McIntire on account of liens upon the R Street property?

A. That I could not say.

WITNESS: Is this the statement?

Mr. HENKLE: Yes.

WITNESS: Well, it is all wrong. Here is a judgment on that I paid to Mr. McIntire myself. I gave you (addressing the defendant E. A. McIntire) $440 myself—you do not remember that, probably—for advertising the house on I street.

Q. I am asking you whether you remember a paper that was filed in that case purporting to be a statement of the account of the monies which were paid by Mr. Hume to Mr. McIntire out of that money.

A. No, sir; I never saw any such statement.

Q. Did you see the papers in that case?

A. No, sir; that is no statement between Mr. McIntire and Mr. Hume, and I never saw any statement between them.

Q. What became of that suit with Mr. Hume?

A. Well, he beat me on it. That statement you have there is entirely wrong.

Q. Did Hume's deed of trust cover also the I Street property?

851 A. No, sir; I do not believe it did.

Mr. HENKLE: Are you speaking from knowledge? I do not want to ask you that, because it does as a matter of fact.

Q. I ask you if the Hume deed of trust covered the I Street property as well as the R Street property?

A. Not that I know of.

Mr. HENKLE: Well, it is hardly fair to ask you that, because the papers show.

Q. Did you claim to Mr. McIntire that those three Streb notes had been paid in the settlement with Mr. Hume?

A. If I remember aright, my testimony was that there were three notes due on that house at the time of the settlement, and that Frank Hume paid them. I thought so, and it was my impression that it was so.

Q. You mean three notes had not been paid that were due?

A. Well, due at that time.

Q. And that the notes due at that time Frank Hume paid?

A. The way I understood it, he paid the whole indebtedness.

Q. Paid all the Steb notes?

A. Yes, sir; because he paid enough money to pay them.

Q. Did you claim at the time that the whole of the Steb notes had been taken up and paid in the settlement that Mr. Hume made?

A. That is what I thought.

Q. Did you claim that in that suit?

A. I could not say whether I did or not in that suit.

Q. You do not know whether you testified to that or not?

A. I think, if I am not mistaken, that I did testify that the Streb notes were all paid by Mr. Hume.

Q. Did you tell Mr. McIntire or claim to him that those three Streb notes had been paid in the settlement with Mr. Hume?

A. Well, if I had been home at the time of the sale and had the money I would have stopped the sale, but I was not in Washington at the time.

Q. I asked you if you claimed to Mr. McIntire that those three last Streb notes had been paid in settlement with Hume.

A. No, sir; I never went to him until I noticed the advertisement in the Star of the sale.

Q. You saw the advertisement in the Star, did you?

A. Yes, sir.

Q. Then what did you do?

A. Why, I could not do anything. I had no money to back me and I was out of town at the time. I did not see the advertisement in the Star until after it was sold. I was in Baltimore that night, and when I came home my wife told me about it.

Q. When did you go to Baltimore?

A. That morning, or the day before, I think it was.

Q. Was it only advertised one day?

852 A. I do not believe it was advertised much more than one day. It might have been advertised a dozen times, for what I know. If I am not mistaken, Frank Hume bought the house in.

Q. You did not see the advertisement before?

A. No, sir; I do not remember seeing it.

Q. After the property was bought in by Mr. Hume did you then go to see Mr. Hume?

A. Yes, sir; and I asked him about the sale of that property, and he said that the next morning he threw up the sale; that the title was in me; that all the notes were paid, and that he threw the sale up; that when Mr. McIntire called at his office the next morning to get his hundred dollars he threw the sale up and told Mr. McIntire he understood all the notes were paid.

Q. That was the reason he threw it up?

A. Yes, sir; about a week after or a day or two afterwards.

Q. What time was it that you went to see Mr. Hume?

A. It was, of course, after the sale.

Q. How long after the sale?

A. Probably the next day.

Q. And he told you that he threw it up because the notes were all paid?

A. Yes, sir.

Q. That is the reason he gave you for throwing it up?

A. Yes, sir; that is what I understood him to say.

Q. Do you know what he bought it for?

A. $1,850.

Q. Was it not $1,550?

A. I forget now how much it was. I think it was $1,550 or $1,850.

Q. Were you satisfied with that sale?

A. No, sir.

Q. Do you know whether there were any other bidders at the sale?

A. I could not say, as I was not there; that was the first sale.

Q. You urged Mr. McIntire to bring suit against Mr. Hume?

A. No, sir; Mr. McIntire came to me. I never urged Mr. McIntire to bring suit against Mr. Hume at all, but Mr. McIntire urged it himself.

Q. You did not urge Mr. McIntire to bring suit against Mr. Hume for the purchase-money?

A. No, sir; but Mr. McIntire came to me and offered $75 if I would testify against Mr. Hume, and I shut the door in his face—on S street, where I was living, between 20th street and Connecticut avenue.

Q. Did you acquiesce in his bringing suit?

A. No, sir.

Q. Did you assent to it?

A. I was opposed to his bringing suit against Hume.

Q. Did you tell him that you were opposed to it?

A. Yes, sir. It was in the evening, about half past six o'clock, that he told me he would give me $75 if I would come down and testify against Mr. Hume, and I told him that I would not.

853 Q. At that time did you tell Mr. McIntire that the whole of those notes had been paid?

A. Well, I understood that all along.

Q. Did you tell McIntire at that time that those Streb notes, for which the property had been sold, had all been paid out of the loan to Hume?

A. I do not remember that I did.

Q. Do you not remember that you did not?

A. No, sir.

Q. Do you not know that you did not claim any such thing?

A. If I claimed that to him once I did a dozen times, and I claimed it also to Frank Hume, because the money that Frank Hume paid I thought had paid all the debt.

Q. Did you claim at that time that those notes had been paid?

A. I thought so all along.

Q. Did you tell McIntire so when he came to you about bringing the suit?

A. I do not remember that I did or did not tell him that.
Q. You objected to the suit against Hume?
A. Yes, sir; and I went down and testified for Hume at the court-house.
Q. What did you testify to?
A. I cannot remember now what I testified to.
Q. Did you testify in that case that those notes were paid?
A. I cannot remember whether I did or not; I could not say; but I remember Mr. Norris in winding up saying, in giving his argument to the jury, that the title was in me.
Q. It was in November, 1876, that the property was sold to Mr. Hume?
A. Yes, sir; I think it was.
Q. On the 26th of December, 1876, the property was sold or knocked down to Mr. Swartzell, was it not?
A. That is what Mr. McIntire claimed.
Q. For $1,175?
A. Yes, sir.
Q. Did you see the advertisement in December, 1876?
A. I did.
Q. What did you do about it?
A. I did not do anything. I was broke. I had no money, else I would have filed an injunction against Mr. McIntire.
Q. You did not go to Mr. McIntire and protest?
A. Certainly I did.
Q. You swear that you did?
A. He was then with B. H. Warner, on F street, and I think I went there and protested.
Q. Do you say that you did?
A. I am almost sure that I did. I know I went to see him several times about it.
Q. You claimed that the notes were paid?
A. I claimed that Mr. Hume paid all those notes by the loan, and I thought so.
851 Q. You did not make any objection to the sale?
A. No, sir; in the first place, I had no money to stop the sale, and I had been behind so long with Mr. Hume and others that I could not stop it.
Q. That was in December, 1876? You have never since, until now, asserted any claim that that sale was improperly made?
A. No, sir.

Mr. MACKEY: I object to the question, for the record shows that Mr. Southey did not assert claim to the property.

Q. You never have asserted any claim since?
A. No, sir; only at the time when I was behind with Mr. Hume. I claimed it then.
Q. Did you ever have any controversy with Mr. McIntire about it?
A. Well, of course, I had several talks with him about it.
Q. Did you ever claim to him that wrong and injustice had been done you?

A. Well, I always claimed that.

Q. Did you ever go and consult Mr. Swartzell?

A. No, sir.

Q. Why did you not?

A. Well, because I did not. I did not know but what Mr. McIntire and Mr. Swartzell were partners. I knew at that time they were in the office together. It was not my business to go and see Mr. Swartzell about it.

Q. I believe you have testified in chief that you conveyed that property to your father-in-law, Cornelius Cohan?

A. Yes, sir.

Q. And when was that?

A. That was, I think, in October, 1876, if I am not mistaken; about that date.

Q. And the property was sold to Mr. Swartzell on December 26th, 1876?

A. Yes, sir.

Q. After the conveyance to Cornelius Cohan?

A. Yes, sir.

Q. What was the consideration for that deed to Mr. Cohan?

A. Well, Mr. Cohan gave me $500 to pay for the purchase-money on that house—that is, he loaned me $400 to pay on the last notes on that house the amount that I paid over to Mr. Charles Attz.

Q. He loaned you that when?

A. In 1868. I bought the house from Mr. Attz for $2,400; $1,400 and $1,000 payable in six and twelve months.

Q. That was eight years before?

WITNESS: Before when?

Mr. HENKLE: Before you made the conveyance to Cornelius Cohan.

A. Yes, sir.

Q. Had you given him any note for that money?

855 A. There was no note required, because he was my father-in-law, and when he loaned me that $400 it was nothing but right, of course, that he should have something for it to save him, he being a working man at a dollar and a half a day.

Q. You did not give him a note at the time?

A. I think I did give him a note.

Q. Do you remember that you did?

A. Well, I do not know. I remember I gave him something for it, and I think I did give him a note.

Q. Had you ever paid any interest on it?

A. Yes, sir; he used to come to the store and borrow a little interest on it, I think about once or twice.

Q. How much interest did you give him once or twice?

A. I think I gave him about ten dollars once or twice.

Q. Twice or once?

A. It might be once or twice.

Q. In that eight years you have given him interest once or twice ten dollars?

A. Yes, sir; he never pushed me.
Q. Did you ever expect to pay him?
A. Yes; certainly.
Q. Did he ever demand it from you?
A. Yes, sir; twice; and that is the time I gave him that deed. He came to me and asked for his money or some security. I told him that I had not it, and I turned that property over to him.
Q. In the equity suit between you and Mr. Hume did not Mr. Hume claim that you were indebted to him, that a balance was coming to him, and say in his answer that he expected to sue you at law for it?
A. Not that I remember.
Q. Do you remember telling Mr. McIntire that Mr. Hume claimed a balance against you and that you were afraid he would sue you, and for that reason you put the property out of your hands to pay Cohan?
A. No, sir; for that is the last thing I would have gone to Mr. McIntire to talk about, or anything like that.
Q. Who collected the rents?
A. Mr. McIntire.
Q. To whom were they paid?
A. He kept the rents—that is, from the time Mrs. Streb left the house.
Q. Did you receive rent on October 17th, 1876, for that property amounting to $55.58?
A. No, sir.
Q. You will swear that you did not?
A. I do swear that I never received a cent of it; I do not remember ever getting a cent from Mr. McIntire for rents, and if he has all the receipts in the country I do not believe that I gave him receipts for any rents.

856 Q. I asked you if you received rents from that property on October 17th, 1876, amounting to $55.58, and you swear that you did not?

A. I do not remember receiving any rents.
Q. Did you receive, on December 5th, 1876, for the same property, rents up to that time amounting to $44.42?
WITNESS: Which property?
Mr. HENKLE: The I Street property.
A. No, sir.
Q. You swear that you did not?
A. Yes, sir; I will swear to that.
Q. Do you know Mr. Swartzell, the young man who testified here?
A. No, sir; I do not know him; I did not know that was the man when he came in here the other day, but I had heard of him.
Q. You swear that he did not pay you on October 17th, 1876, $55.58 on account of rent of that property, and on December 5th, 1876, $44.42?
A. No, sir; I do not remember receiving one dollar of rents, be-

cause I remember going to Mr. McIntire, but I never could get a cent out of him.

Q. Now, you say positively that you did not receive any rents on that property after you conveyed it to Mr. Cohan?

A. Not that I remember.

Q. Do you say that you did not?

A. I do not remember ever receiving a cent.

Q. And you never claimed any rent after you conveyed it to Mr. Cohan?

A. Well, I believe Mr. Cohan probably did.

Q. I am talking about you.

A. No, sir; I never claimed any rent from Mr. McIntire after that.

Q. From anybody?

A. No, sir; Mr. McIntire collected it.

Q. You did not claim rents of that property after it was conveyed to Mr. Cohan and you did not receive any?

A. I am not positive about that. I do not remember receiving any.

Q. Well, if you did, why did you do it?

Mr. MACKEY: Objected to as hypothetical and meaningless.

A. I do not remember receiving any.

Q. Do you know how your wife came to bring this suit?

A. I told her about it.

Q. What did you tell her about it?

Mr. MACKEY: That question is objected to. Nobody knows better than counsel that he cannot call for conversations between husband and wife.

A. I told her that I thought there was some trouble about that property, and that she was interested and see about it.

857 Q. How did you come to have the idea after all this time that there was any reason why you should bring suit?

A. I saw so many claims in the newspapers against Mr. McIntire that I made Mr. Mackey hunt it up.

Q. Nobody said anything to you about it before you saw it in the newspapers?

A. No, sir.

Q. Nobody came to you?

A. No, sir.

Q. You had no conversation with Mr. Mackey about it?

A. No, sir; I came to him.

Q. Before he came to you?

A. Yes, sir.

Q. Nobody came to you at all?

A. Nobody came to me; certainly not.

Q. Anybody come to your wife?

A. I went to my wife myself.

Q. Anybody else go to your wife?

A. I took Mr. Mackey up there.

Q. Had nobody gone to you?
A. No, sir.
Q. Honor bright, now.
A. I say honor bright I came to Mr. Mackey myself.
Q. You came to him first?
A. Yes, sir; I met him on 10th street, in front of the gas office.
Q. Nobody spoke to you about it?
A. No, sir.
Q. Had you an acquaintance with him before that?
A. No, sir; I only saw the suits in the newspapers.
Q. You knew him by sight?
A. No, sir.
Q. How did you know him?
A. I came to his office and then he came down there. I met him on the street. I came to his office first, and then he came to me afterwards.

Redirect.

By Mr. MACKEY:

Q. You gave to Mr. Warner a deed of trust for $2,100, dated August 10th, 1871, on your R Street property, payable in two years; that was the first trust you gave?
A. Yes, sir; on the R Street property.
Q. Then you gave him a deed of trust dated the 7th of October, in the same year, for $500?
A. Yes, sir; through B. H. Warner.
Q. Now, then, after that you had this Streb transaction of the 12th of December, 1872, in which you took $2,200 of notes which were secured upon the I Street property and carried them to Mr. McIntire, and he gave you $1,000 of those notes which you had given on August 10th, 1871?
858 A. Yes, sir.
Q. And he gave you $325 in cash besides?
A. Yes, sir.
Q. In other words, he gave you $1,325 for $2,200?
A. Yes, sir.
Q. Now, then, that trust which you gave August 10th, 1871, for $2,100 fell due August 10th, 1873, did it not?
A. Yes, sir.
Q. And you made him on August 8th, 1873, a trust for $1,000 to take up the $1,100 that was due on that trust of August 10th, 1871?
A. Yes, sir.
Q. Do you know what became of the $100 note?
A. I might have given him at that time some money; I cannot remember.
Q. But, anyhow, that settled the $2,100 trust?
A. Yes, sir.
Q. The trust which you gave him dated October 7th, 1871, for $500 (that is the second trust you made immediately after you made

the $2,100 trust) fell due on October 7th, 1874, did it not, being made for three years?

A. Yes, sir.

Q. Then you gave him on October 10th, 1874, a trust for $600?

A. Yes, sir; and that is the trust I gave him to take up that other one.

Q. This other trust of September 4, 1874, you do not know what that trust was given for unless it was in settlement of these other Streb notes?

A. It must have been, because I never received any money from Mr. McIntire. I did not owe him any more money.

Q. That you do not state positively, but that is your inference from the fact that you never got a single dollar from Mr. McIntire?

A. Yes, sir.

JOHN SOUTHEY.

* * * * * * *

(Adjourned.)

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In the Supreme Court of the District of Columbia.

CATHERINE SOUTHEY, MARGARET COLE, and MICHAEL COHAN *vs.* EDWIN A. MCINTIRE and MARTHA MCINTIRE. } In Equity. No. 13034.

Be it remembered that at an examination of witnesses began and held on the 23rd day of March, 1893, pursuant to agreement, and at other times agreeably to adjournments, personally appeared before me, Albert Harper, an examiner in chancery of said
859 court, the within-named Edwin A. McIntire, Martha McIntire, who, being produced as witnesses of lawful age for and on behalf of the defendants and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

Testimony for Defendants.

MARCH 23, 1893.

* * * * * * *

Edwin A. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. You are one of the defendants in this case of John Southey?

A. I am.

Q. What relation are you to Martha McIntire, the other defendant?

A. She is my sister.

Q. What interest, Mr. McIntire, have you in the property in controversy in this suit?

A. None whatever.

Q. Did you ever have any interest in it other than as trustee?

A. Never in any other way than as trustee or as agent for the collection of rents.

Q. Will you state when your connection with John Southey and this property commenced and how?

A. It commenced in December, 1872, when I assisted in the negotiation of the sale of the property to Magdalena Streb and also in negotiating the notes secured by deed of trust and given by her for the deferred payments.

Q. You say that you negotiated the sale of this property to Mrs. Streb on behalf of Southey?

A. Yes, sir; in connection with one Burn. I think it is P. Burn, a real-estate broker.

Q. Will you look at the paper now handed you, which purports to be a deed of trust from Louis Streb and Magdalena, his wife, to Edwin A. McIntire, trustee, bearing date December 12, 1872, and state whether that is the deed of trust to which you have referred?

A. That is the one.

Mr. HENKLE: I here give this deed of trust in evidence.

Mr. BOARMAN: With the accompanying papers.

Mr. HENKLE: We have not come to them yet. I will offer them when I come to them.

(NOTE.—And said deed is herewith filed in evidence and marked Exhibit A. H. No. 3.)

Q. This deed recites the making of eight promissory notes for the sum of $275 each. Did you not negotiate those notes?

860 A. I did.

Q. For whom?

A. For John Southey.

Q. And who became the purchaser of the notes?

A. One of them was purchased by a man named Thomas Lewis in the War Department; another one was purchased by a man named M. P. King in the War Department; the next three were purchased by David McIntire, and the next three by Martha McIntire. I may possibly be mistaken about the one to Mr. King, but that is my recollection; the others I am positive about.

Q. Which three were purchased by Martha McIntire?

A. The last three.

Q. There are three notes attached to this deed of trust (Exhibit A. H. No. 3), all bearing date December 12, 1872—one payable thirty-six months after date, another forty-two months after date, and the third forty-eight months after date—each for $275, with interest at the rate of ten per cent. per annum. Will you be kind enough to state whether those are the three notes which were purchased by Martha McIntire?

A. They are.

Q. And did she continue to hold them until the property was sold?

A. She did, and ordered the sale.

Mr. HENKLE: I here give those three notes in evidence.

(NOTE.—And the same are herewith filed in evidence and marked respectively Exhibits A. H. Nos. 4, 5, & 6.)

Q. Following the acknowledgment of this trust deed (Exhibit A. H. No. 3), I see written these words: "Nov. 8, 1876. I want this property sold; several of the notes have not been paid, and I suppose they have not settled for the taxes. M. McIntire." Will you look at that writing and state if you know whose it is?

A. That is the writing of my sister, Martha McIntire.

Q. The whole of it is written in her own handwriting?

A. Yes, sir; and written at the time it purports to have been.

Q. Was it delivered to you at that time?

A. On or about that time.

Q. Did you hold the trust deed at that time or did she hold it?

A. I am not really positive. That is one of the matters where my brother and I purchased the notes for her. It is just possible that he might have held it. He held many papers referring to her property until his death.

Q. When did he die?

A. In 1879.

Q. Now, I find pinned to this trust deed (Exhibit A. H. No. 3) also a scrap of paper upon which these words are written: "Dear Eddie: If no one bids above the amount of my notes of house No. 2112 I street tomorrow ask Mr. Coldwell to consider my bid for that amount. Martha McIntire. P. S.—Would it not be well to see if Mr. Hume will take the place? M. M." Will you look at that paper and state if you know in whose handwriting it is?

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A. It is in the handwriting of my sister, Martha McIntire, and was handed to me just before the sale of the property on I street, as my authority for bidding the property in.

Q. It was handed to you by her?

A. It was.

Mr. HENKLE: I here give that paper in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 7.)

Q. I want to know whether all the other notes than these last three had been paid at the time this direction was given to you to sell the property.

A. Yes, sir; all notes that fell due prior to these three notes.

Q. All the notes secured by the deed of trust?

A. All the notes secured by the deed of trust, which notes had matured at the time of the settlement with Frank Hume.

Q. Well, were there any which had not matured?

A. None but these three; well, these three had matured, too, at

the time of the sale, but not at the time of the settlement with Frank Hume.

Q. What I want to know is whether any of these notes were outstanding except those notes which were owned by your sister, Martha McIntire.

A. No, sir.

Q. Those were the last of the notes, all the others being paid?

A. Yes, sir.

Q. Did you make the sale as directed by the beneficiary and holder of the note?

A. I did.

Q. Who was the auctioneer?

A. J. T. Coldwell.

Q. Where was the sale made?

A. In front of the premises, No. 2112 I street northwest.

Q. Was the property advertised?

A. It was.

Q. You have not a copy of the advertisement with you?

A. No, sir.

Q. It was regularly advertised and sold. Were you present at the sale?

A. I was.

Q. Was your sister, Martha McIntire, there?

A. I think not.

Q. What was the bidding upon the property?

A. There was a pretty good number of people there. After some bidding it was knocked down to Frank Hume, who was the highest bidder.

Q. At what price?

A. I think fifteen hundred and fifty dollars or thereabouts.

Q. Well, did you make a deed to Frank Hume?

862 A. Frank Hume declined, or, at least, he offered on the day of the sale to make a deposit on the following day at his store. He put me off from day to day in making the deposit, and at last sent me a note, which I handed you awhile ago, declining to take the place.

Q. I hand you a paper which reads as follows: "Washington, D. C., Nov. 25th, 1876. Frank Hume, Esq. Dear Sir: Having carefully examined the title to part of lot 21, in square 77, I find that the same is not in Edwin A. McIntire, but is good in George C. White, trustee, by deed from John Southey and wife dated July 7, 1875. Taxes not reported. Yours truly, Sam'l T. Drury, att'y-at-law." Below which is written in pencil these words: "D'r Mr. McIntire: Above you will find report of Mr. Drury, which is after a careful examination of the title. F. Hume." Where did you get that paper?

Mr. MACKEY: I object to this writing going upon the record, it being a statement by a third party not in any way in privity with anybody to this suit.

A. This is a paper which Mr. Hume sent me a few days after

the sale to him, and upon seeing him afterwards he expressed that as a reason why he declined to take the property which he had bid in.

Q. Had you demanded of him compliance with the terms of sale?

A. I had.

Q. And he sent you that note by way of explanation why he declined?

A. Yes, sir; and then told me verbally afterwards just what is embraced in that note.

Mr. HENKLE: I here give that note in evidence.

Mr. MACKEY: To the admission of which I renew the objection heretofore made to it.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 8.)

Q. I hand you a paper which purports to be signed by Frank Hume and ask you what that paper is.

A. This paper is signed by Mr. Frank Hume and was served upon me as trustee at the time of the sale of the property on I street to him.

Mr. HENKLE: I here give that paper in evidence.

Mr. MACKEY: Objected to on the ground that it is a paper written by a third party.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 9.)

Q. Where did you get that paper, Exhibit A. H. No. 9?

A. It was handed to me by Mr. Hume at the time of the sale.

Q. He was present at the sale?

A. Yes, sir.

863 Q. And he handed you this paper before the sale?

A. Yes, sir.

Q. Is that his signature to that paper?

A. Yes, sir.

Q. Mr. McIntire, you have stated, I believe, that Mr. Hume declined to take the property?

A. Yes, sir.

Q. And for the alleged reason disclosed in the note from Mr. Drury?

A. Yes, sir.

Mr. MACKEY: I also object to this paper (Exhibit A. H. No. 9) because it appears to be a copy.

Q. That was the paper handed to you by Mr. Hume?

A. This is the paper which was handed to me by Mr. Hume himself.

Q. I hold in my hand a paper which reads as follows: "Office of Frank Hume, wholesale grocer, successor to Poole & Hume, 454 Pennsylvania avenue. Washington, Dec. 29, 1875. E. A. McIntire, Esq. D'r Sir: You will please let me know if Southey took up the

Streb note due last week; also, if not, what does he propose, and oblige, very truly yours, Frank Hume." Will you state where you got this paper?

A. This paper was sent to me by Mr. Hume. I afterwards went and answered it in person.

Q. What did you answer?

A. That Mr. Southey had not paid the note.

Mr. HENKLE: I here give that paper in evidence.

Mr. MACKEY: To the admission of which we object as being a communication from a third party not in privity with anybody in this suit.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 10.)

Q. I hold in my hand a paper which reads as follows: "Mr. E. A. McIntire: In reference to those notes of Mrs. Streb, I have been disappointed in receiving money, and that is why I have not been down to see you. On Friday next you may depend upon my calling and settling the matter without further delay. Please make this explanation to the holders of the notes. Yours, etc., Jno. Southey." Will you please look at that paper and state when and how and where you got it?

A. This paper I received from Mr. Southey on Monday, Nov. 13, 1876, my memorandum says, and I believe that to be correct. He explained that he wrote the note thinking that he might not find me in; but, finding me in he gave it to me in person, and then stated substantially what is there. This is in regard to those notes.

Mr. HENKLE: I here give that paper in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 11.)

864 Q. Did he call, as indicated in the note, for the purpose of paying the notes?

A. He called several times, but he never paid the notes.

Mr. MACKEY: This paper (Exhibit A. H. No. 11) is objected to as having no date whatever showing when it was written.

Q. I hand you three slips of paper, one of which reads as follows: "Wash., D. C., March 31, '75. Dr. Prentiss, cashier: Please hand to Mr. E. A. McIntire the note of John Southey, amounting to $1,000, due August 8–11, 1875, and deposited in your bank to my credit for collection. Resp'y, &c., Martin P. King. Colls. 1806–'7–'8–'9." What does that mean?

WITNESS: That is a bank mark.

Q. (Continuing:) Upon the back of which paper is indorsed, "Colls. 1806–'7–'8,–'9, Southey. I have received the within notes. May 8, '75. E. A. McIntire." The other slip reads as follows: "Wash., D. C., Mar. 31, '75. Dr. Prentiss, cashier: Please hand to E. A. McIntire note of Magdalena and Louis Streb for $275, due June 15, '75, and deposited by me in your bank for collection.

David McIntire. Coll. 7422;" upon the back of which is this indorsement: "Col. 7422. May 8, '75. I have received the within-mentioned note. May 8, '75. E. A. McIntire." And the third slip reads as follows: "Wash'n, D. C., March 31, '75. Dr. Prentiss, cashier: Please hand to Mr. E. A. McIntire six notes, of $200 each, drawn by John Southey (3 due Sept. 7, '75, and 3 due Oct. 13, '75), deposited to my credit in your bank. David McIntire;" upon the back of which is this indorsement: "Colls. 7889-'90-'91-'92-'93-'94. I have received the within-mentioned notes. E. A. McIntire. May 8, '75." Will you please state what you know about those slips of paper?

Mr. MACKEY. I object to this method of counsel reading papers to the examiner for entry upon the record. It cannot be evidence, the original papers themselves being here, and should be read to the court, and there is no evidence that Gen. Henkle is such an expert reader as to be able to decipher the handwriting and read it correctly, and he may read it all wrong for aught we know.

A. In the latter part of March, 1875, Mr. Southey reported to me that he was about to negotiate a loan with Mr. Frank Hume, to whom he was indebted, and that Mr. Hume desired to take up the indebtedness then due on the property at the corner of 19th and R streets northwest. Accordingly I notified the holders of these various notes, and these papers just produced are the orders from the persons named to the cashier of the German-American bank to turn the notes over to me, that I may be enabled to make settlement with Mr. Hume.

Q. I want to ask you if this is the genuine signature of Martin P. King to this first slip of paper.

A. Yes, sir.

Q. Did you see him write it?

865 A. Yes, sir.

Q. And the other two slips contain the genuine signature of David McIntire, do they?

A. Yes, sir.

Q. Did you see David McIntire write his signature to those slips?

A. I did.

Mr. HENKLE: I here give those slips of paper in evidence.

(NOTE.—And the same are herewith filed in evidence and marked, respectively, Exhibits A. H. Nos. 12, 13, and 14.)

Q. I want to know whether you subsequently sold the property as directed after Mr. Hume declined to complete his purchase?

A. I did.

Q. Who was the auctioneer?

A. J. T. Coldwell.

Q. When was the sale made?

A. Dec. 26, 1876.

Q. And where?

A. In front of the premises.

Q. Were you present at the sale?
A. I was.
Q. To whom was that property knocked down by the auctioneer?
A. It was knocked down by the auctioneer to Mr. Swartzell, although he was directed to knock it down to Martha McIntire, as the bid was made in her name.
Q. Did you make a deed to Mr. Swartzell?
A. I did, and he immediately assigned his interest in the property to Martha McIntire.
Q. Was the deed made to Mr. Swartzell?
A. Yes, sir.
Q. How soon after the sale?
A. Well, I have forgotten whether the same day or the next day, but almost immediately after the sale.
Q. And he made a deed to whom?
A. To Martha McIntire.

Mr. MACKEY: I object to both the question and answer on the ground that if any deed is made it is the best evidence of the fact.

Mr. HENKLE: That deed is in evidence, is it not?
WITNESS: No. Mr. Swartzell testified that he cancelled that deed when he made another deed to Emma Taylor.
Q. What became of the deed?
A. That is my recollection; that it was cancelled when he made a deed subsequently to Emma Taylor.

Mr. MACKEY: Question and answer also objected to for the same reason.

Q. And why did he do that?
A. He cancelled the deed to Martha McIntire because he did not want two deeds out from him for the same property.
Q. Why did he make a deed to Emma Taylor?
866 A. At the suggestion of some one who was then examining the title and could not find this deed to Martha McIntire on record. They suggested that the most economical plan would be to make one deed from him, and he agreed to that.
Q. How did Emma Taylor become connected with it?
A. She purchased it from Martha McIntire.
Q. Martha McIntire sold it to Emma Taylor?
A. Yes, sir; through me as her agent.
Q. And then, to save the making of another deed, the deed from Mr. Swartzell to Martha McIntire never having been recorded, he cancelled that deed and made a deed directly to Emma Taylor?
A. Yes, sir.

Mr. MACKEY: I suppose it is unnecessary for me to repeat my objection to every question. I wish to say that I object to this whole line of examination, so far as the witness undertakes to testify to the existence of deeds or the making of deeds, it being manifest that the papers themselves are the best evidence of the fact.

Q. Where is that deed?

WITNESS: The deed to Emma Taylor?

Mr. HENKLE: Yes.

A. I am not certain whether it is in evidence or not.

Mr. HENKLE: If the original deed is not already in evidence and we can find it we propose to put it in evidence; if we cannot find it we will offer the record of the deed.

Q. Now, how did the title get into Martha McIntire subsequently?

A. She purchased from Emma Taylor that property on I street and the property known as the Pryor property on F street, and by one deed they were conveyed to her.

Q. What have you to say, of your own knowledge, as to that purchase of your sister, Martha McIntire, from Emma Taylor?

A. I negotiated the purchase myself. Miss Taylor desired to sell the property and offered it at what I thought a bargain, and I offered it to my sister, Martha McIntire, knowing that she had money which she wanted to invest, and the sale was made to her.

Q. And she paid for it?

A. She did—twenty-five hundred dollars.

Q. How did she pay for it?

A. She uniformly paid in cash to me. I do not know how it was in that particular case.

Q. What I mean is there was no credit?

A. No, sir; it was cash.

Q. It was paid in cash or by check?

A. Either one or the other.

Q. Well, now, I believe you have said that she has held the property ever since?

A. Yes, sir, and received the rents ever since.

Q. Who has collected the rents?

A. I have collected the rents as her agent, as I do for all her houses.

867 Q. Is she still in the ownership and possession of the property?

A. She is.

Q. Collecting the rents?

A. I collected the rents and turned them over to her from time to time.

Q. I want to ask you again what interest you have in that property?

A. None whatever.

Q. And never have had?

A. And never have had except as trustee under the deed of trust and as agent for the collection of the rents.

Mr. MACKEY: Since the foreclosure sale?

WITNESS: I collected for Mr. Southey before that time. I have collected the rents ever since this foreclosure sale—no; I do not mean since the foreclosure sale. I mean ever since the sale to Martha McIntire.

Mr. HENKLE: Now, hold up, Mr. Mackey, I will ask the questions.

Q. You say that since the sale to Martha McIntire you have collected the rents?

A. Yes, sir.

Q. And paid them over to her?

A. Yes, sir; from time to time. She comes to my office and I pay them over to her.

Q. Before the sale to Martha McIntire who collected the rents?

A. Well, I have been trying to see from any memoranda I have whether I ever collected anything for Emma Taylor. I have not finished my search, and I do not know whether I did or not, but I remember distinctly collecting the rents for Southey.

Q. Until what time did you collect for Southey?

A. That I am unable to fix my mind upon. I have nothing to refresh my memory about that.

Q. Did you or not make any collections of rent from this property after the deed from Southey to Cornelius Cohan?

A. I did as a member of the firm of B. H. Warner & Co.

Q. Do you know for what time you collected it?

A. I collected it up to the date of the sale.

Q. You mean the sale to Swartzell?

A. Yes, sir; up to the date of the sale to Swartzell.

Q. What did you do with those rents?

A. They were turned over to John Southey.

Q. He accepted them as his own?

A. He did.

Q. At what time did you know of the conveyance to Cohen?

A. I did not, or I should not have paid them to him. I, however, had heard him say that he intended to convey the property to some one to prevent Mr. Frank Hume collecting a judgment against him.

Q. When did he say that?

A. To the best of my recollection, about the time of the
868 suit between him and Mr. Frank Hume for the 19th and R Streets property. The date I could only tell by looking at the record of that suit.

Q. What do you mean by the suit for the 19th and R Streets property?

A. The equity suit No. 5192 of John Southey *vs.* Frank Hume to set aside the sale of the property at the corner of 19th and R streets after Mr. Hume had sold it under a deed of trust, and in that suit the statement was made as to the time. I remember being called as a witness in that suit and remember that it was about the time of that suit that I had the conversation with Mr. Southey. I never knew Mr. Cohen, never saw him, and never heard of him until this suit was instituted. I understood there was somebody to whom Southey was to convey the property for the purpose I have named.

Q. I hand you a paper purporting to be a deed of trust of John Southey and wife to Edwin A. McIntire, trustee, bearing date August 8, 1873, and ask you please to explain what that is. I will ask you, in the first place, whether that was a genuine deed of trust and what it was for.

A. This is the deed of trust which was marked for identification "J. S. No. 1" heretofore during the taking of the testimony for the complainant in this case, and it is a deed of trust from John Southey and wife to secure M. P. King in the sum of one thousand dollars which was loaned to Mr. Southey upon the property on the corner of 19th and R streets.

Q. Well, what had you to do with it? Did you negotiate the loan?

A. I negotiated this loan for Mr. Southey, at his request, and procured him the one thousand dollars.

Q. And that is the deed of trust which was made to secure it?

A. Yes.

Mr. HENKLE: I here give this deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 15.)

Q. I hand you a paper purporting to be a deed of trust from John Southey and wife to Edwin A. McIntire, trustee, bearing date September 4, 1874, and ask you whether that is a genuine paper, what it is and what it was for.

A. This is genuine. This deed of trust was written by me at the request of my brother, Henry McIntire, and was for a loan which he negotiated with Mr. Southey and with which I had nothing else to do, except to draw the deed and act as trustee.

Mr. HENKLE: I here give this deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 16.)

Q. I hand you a paper purporting to be a deed of trust from John Southey and wife to Edwin A. McIntire, trustee, bearing date
869 October 10, 1874, and ask whether that is a genuine paper made by Mr. Southey and wife, and explain what it was for.

A. This deed was marked for identification "J. S. No. 3" during the time for the taking of testimony for the complainant in this case, and it is a deed of trust like the previous one, which I drew up at the request of my brother, Henry McIntire, who himself negotiated the loan with Mr. John Southey. I had nothing whatever to do with the loan except as trustee.

Mr. HENKLE: I here give that deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 17.)

WITNESS: The deed of trust filed a moment ago as Exhibit A. H. No. 16 was marked for identification J. S. No. 2 during the taking of the testimony for the complainant in this case.

Q. I hand you a paper, filed as Exhibit A. H. No. 2 by the complainant in this case, purporting to be a deed or release from Edwin A. McIntire, trustee, to John Southey, bearing date July 9, 1875, and ask you whether you executed that release and to explain the purpose and scope of it.

Mr. BOARMAN: Objected to because the paper speaks for itself.

A. This release was made by me at the time I had the settlement with Mr. Hume for the indebtedness on the property on the corner of 19th and R streets, and in this deed of release I recite specifically, "Whereas so much of said indebtedness as is due from the said above-described premises (referring to the premises 19th and R streets) has been fully paid," &c., intending by that deed of release to release the 19th and R Streets property from the indebtedness, and which left really three unpaid and undue notes of Streb secured upon the property 2112 I street.

Q. Now, Mr. McIntire, that deed is a deed of release for these deeds of trust which have just been put in evidence, as well as for the trust taken by you to further secure the Streb notes at the time you negotiated the sale of those notes for Southey. Is that it?

A. Yes, sir; it released all of these deed of trust notes, the Streb notes, due and paid at that time.

Q. It released all the Streb notes except the three last, not then due?

A. Yes, sir.

Q. Were those three last notes the three notes which have been given in evidence this afternoon, which were held by Martha McIntire and for which the I Street property was finally sold?

A. Yes, sir; this deed of release was given six months before the earliest one of these three notes held by Martha McIntire became due.

Q. Well, now, I want you to state with explicitness if that is so—that is, whether or not this release was intended to cover these three notes.

A. It was not intended to cover those not yet due.

Mr. MACKEY: I object to any testimony as to what the
870 deed of release was intended to be, as the deed speaks for itself and there is no ambiguity about it.

Q. Was the original trust, so far as it secured those three notes upon the I Street property, ever released by you?

A. It was not.

Q. I want to know if any of those notes in any transaction, either through Mr. Hume or in any way, were paid until they were settled by the sale of the I Street property.

A. They were not.

Q. Well, now, I want to know whether or not all of the financial transactions between you and Mr. Southey were comprehended in and covered by this transaction as to which you have been testifying.

A. Yes, sir; I believe they were. I may have collected some interest on some other deeds of trust. If I did so, I did it as agent for some one else. I collected for Henry McIntire and David McIntire and for B. H. Warner, but I have no way of refreshing my recollection, as it has been so long ago. I know I did not own any of these notes myself.

Q. I was going to ask you whether in any of these transactions

of which you have been testifying you had any personal or pecuniary interest except as trustee.

A. That is all.

Mr. HENKLE: Now, Mr. Mackey, what time do you have to go?

Mr. MACKEY: I have to go now. I am over my time now.

Mr. HENKLE: Well, it is half past three, and this is a good place to stop.

Mr. MACKEY: As soon as Mr. Harper writes this out I will read it over and then cross-examine Mr. McIntire.

Mr. HENKLE: I am not quite through with the witness.

(Adjourned.)

MARCH 25, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who deposes and says, being recalled for further—

Direct examination.

By Mr. HENKLE:

Q. I hand you a paper and ask you to state what it is.

A. This is a bill dated December 26, 1876, from Brainard H. Warner, auctioneer, for the advertising and for the service of the auctioneer in selling the property No. 2112 I street northwest. Mr. Warner was a licensed auctioneer; Mr. Coldwell acted as the auctioneer for him, and when I said the other day that Mr. Coldwell was the auctioneer I meant that he acted for Mr. Warner. This bill shows $88.69 paid for advertising and for the auctioneer, &c.

871 Q. Was that for the sale of this I Street property of which Martha McIntire became the purchaser?

A. Yes, sir.

Q. Where did you procure this bill?

A. It was handed to me by some one in the office, and was paid by me there.

Q. Whose signature is that on the bill, if you know? It is a receipt, is it not?

A. It looks as if it might be Mr. Warner's signature, and yet "per" is written under it. It is, however, the ordinary receipt of the office.

Mr. HENKLE: I here give this bill in evidence.

Mr. MACKEY: For what purpose?

Mr. HENKLE: To show that the sale took place and that the expenses were paid.

Mr. MACKEY: Objected to because it is not evidence of either of the matters for which it is offered.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 18.)

Q. I hand you a paper and ask you to state what it is.

A. It is a letter dated July 10, 1875, sent to me by Mr. Frank Hume, asking me to make out a deed of release for the R and 19th

Street property as per our agreement, and that he would pay the incumbrance upon that property. This was sent to me in pursuance of an agreement made between Mr. Hume, Mr. Southey, and Mr. Southey's attorney, Mr. Thomas Miller, now judge of the police court, that I should present the incumbrance of the 19th and R Street property at that time and that Mr. Hume would make payment of the amount to me.

Mr. MACKEY: I object to the witness stating what was said to him by other persons as not being proper testimony.

Q. Where did you get this note?
A. That was sent to me by Mr. Frank Hume.
Q. Do you know that that is his signature?
A. I do; I went and consulted him; afterwards met him according to appointment there.
Q. Well, did you have a settlement?
A. I did.

Mr. HENKLE: I here give this letter in evidence.
Mr. MACKEY: For what purpose do you offer it in evidence?
Mr. HENKLE: For the purpose of showing that Mr. Hume paid Mr. McIntire the amounts of these other trusts and all the indebtedness that was outstanding against the R Street property of Southey, save the three notes for which the I Street property was finally sold.
Mr. MACKEY: The admission of this letter in evidence is objected to on the grounds, first, that it is *res inter alia;* and, secondly, that it is not legal evidence of the matters and things of which it is proposed to offer it in evidence.

872 (NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 19.)

Q. You have testified that the rents of the I Street property were paid to Mr. Southey after the time of the deed from Southey to Cohan and up to the time of the sale of the I Street property under the deed of trust at which Martha McIntire became the purchaser.
A. Yes, sir.
Q. Will you please examine the paper which I now hand you and state what it is?
A. This is a copy of an account taken from the books of B. H. Warner & Co., showing the payment made to Southey on October 17, 1876, of $55.58, and on December 5, 1870, of $20.42, $19, and $5, making a total of $100.00 paid him.

Mr. MACKEY: I object to the witness stating the contents of the paper, the paper itself, if admissible, being the best evidence of what it shows.
Mr. BOARMAN: And because it is only a copy from the books of Warner & Co.
Mr. MACKEY: And, secondly, on the witness' own statement it is only a copy from another paper or book, and if the original would not be admissible, certainly a copy would not be.

Q. Where did you get that paper?

A. This paper was prepared by Mr. Swartzell, the book-keeper at B. H. Warner & Co., made on or about that time—December 5, 1876.

Q. Is it in the handwriting of Mr. Swartzell, the book-keeper?

A. Yes, sir; I went yesterday to the office of B. H. Warner & Co. and compared it with the ledger and found it to be a correct copy from page 426 of the ledger.

Q. From the original entries in that book?

A. Yes, sir.

Q. In addition to the evidence of the paper, state what you know yourself of the fact.

A. The entries in the ledger are in my own handwriting, made when I was a member of the firm of B. H. Warner & Co., and I remember distinctly paying the money to him.

Mr. HENKLE: I here give that paper in evidence.

Mr. MACKEY: What is it offered in evidence for?

Mr. HENKLE: Why, for the purpose of showing that Mr. Southey received the rents after he pretended to have sold the property himself and was acting as the owner of the property.

Mr. MACKEY: Well, I object to it as not evidence to prove that fact, if it be a fact; the best evidence is obtainable, and that would be at most only secondary evidence, and it is inadmissible because it is hearsay evidence and unsworn testimony, a mere paper.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 20.)

873 Q. I hand you a paper and ask you to state what it is and explain it.

A. This is a copy of a settlement that I had with Mr. Frank Hume on July 20, 1875, when he paid the encumbrances due up to that time on the property at the corner of 19th and R streets. A copy of this statement he filed in equity cause No. 5192 of Southey *vs.* Hume.

Mr. MACKEY: Add to my objection to the admission in evidence of Exhibit A. H. No. 20 that it is also objected to because the matter proposed to be proven is not relevant to the issues in this case.

Q. Is that a correct statement of the settlement between you and Mr. Hume on account of the matter relating to the incumbrances upon the Southey property which Mr. Hume paid?

A. It is.

Q. Did Mr. Hume pay you three thousand four hundred and thirty-six dollars and eight cents at that time?

A. He did.

Q. And that, you say, paid what?

A. Paid all the incumbrances due at that time on the property on the corner of 19th and R streets, leaving unpaid of the Southey notes three notes in the Streb matter, secured on No. 2112 I street northwest.

Mr. HENKLE: I here give this statement of account in evidence.

Mr. MACKEY: Objected to because on its face it is only a copy and it is not shown that the original is not obtainable.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 21.)

Q. Mr. Southey, on pages 5, 23, and 24 of his testimony in this case, says that when he sold to Edwin A. McIntire the twenty-two hundred dollars of the Streb notes Mr. McIntire gave him one of his own (Southey) notes for one thousand dollars and three hundred and twenty-five dollars in cash.

A. I deny that statement. I charged him a commission, of course, as I always do for negotiating a loan, but I never in all my experience charged a man so much as he tries to make out there by that statement. I know I gave him more than three hundred and odd dollars. I have no recollection of a note, but if there had been a note of his presented for payment then I might have, at his request, paid it.

Q. You state, then, that you know that is not correct?

A. I know that statement is false.

Q. On page 6 he says that the trust of September 4, 1874, to secure Henry McIntire for $600, was to take up the $500 note and the trust, and on page 28 he says that the trust of October 10, 1874, to secure Henry McIntire in the sum of $600, was to take up the Streb notes. What have you to say as to that?

A. I am positive that neither one of those trusts was used in payment of any of the Streb notes. It is possible that one of them was used to take up the $500 note, but which one that was could
874 be easily shown by the date of the relaese of the $500 trust. I am positive I saw my brother, Henry McIntire, pay Mr. Southey over $400, I think over $500, in consideration of one of those deeds of trust. I never had anything to do with that myself except to draw the deeds.

Q. Look at this paper and state what it is.

A. This is an order given by my brother, Henry McIntire, on Justice Webster, dated March 17, 1875, and reads: "Please pay to bearer amount collected in cause No. 512, McIntire *vs.* Southey"——

Mr. MACKEY (interposing): I object to the witness reading what the paper contains.

WITNESS: I cannot answer the question without reading the paper. My brother, Henry McIntire, had loaned Mr. Southey several small sums and some of these small sums were paid in one of these transactions, I believe, that my brother had with him; two of them, however, were matters of suit before Justice Webster.

Mr. HENKLE: I here give this paper in evidence.

Mr. MACKEY: For what purpose?

Mr. HENKLE: For the purpose of showing that there were transactions between Southey and Henry McIntire outside of these trusts in which Southey was the debtor to Henry McIntire on other accounts.

Mr. MACKEY: I object to it on the grounds, first, that it is secondary evidence; secondly, that the paper contains nothing on its

face to connect it with the issues raised in this case, and, thirdly, that it is evidence of matters and things rising *inter alios*.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 22.)

Q. What is the paper which you hold in your hand?

A. This refers to another suit brought by Henry McIntire against John Southey before the same justice of the peace. It is notice of a supersedeas. Although it states on its face "Hugh McIntyre, plaintiff, *vs.* John Southey *et al.*, defendant-," and is directed to "Hugh McIntire," that is a clerical error, I can state positively, because the paper was handed to me by my brother, Henry McIntire, to examine as to the sufficiency of the sureties named on this notice.

Q. Where did you get this paper?

A. I got this paper from my brother, Henry McIntire, to examine as to the sureties on the supersedeas.

Mr. HENKLE: I here give this paper in evidence.

NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 23.

Mr. MACKEY: Objected to for the same reasons heretofore given to the other paper next above.

Q. On page 7 Mr. Southey says that there were three of the Streb notes due at the time of the transaction with Mr. Frank Hume. What have you to say as to that?

A. That it is untrue. There were three notes due then,
875 and those three notes due were paid, but the three not due, the three drawn for thirty-six and forty-two and forty-eight months, one of which did not fall due until six months after that settlement, were not paid, and, as I said before, remained as an incumbrance upon the property No. 2112 I street.

Q. By whom were those three notes owned?

A. Those three notes were held by Martha McIntire.

Q. And not embraced in that settlement?

A. Not at all.

Q. In that settlement did you say that Mr. Southey was present when you settled with Hume?

A. Yes, sir; the settlement was made in Mr. Southey's store, on the corner of 19th and R streets.

Q. Did he have the benefit of counsel?

A. Mr. Thomas F. Miller was his counsel, and I think he was present; if not at that time, he was present when the negotiations were made—when the account was settled upon.

Mr. MACKEY: I object to this testimony on the ground that the case itself, being of record, is the best evidence of what was done—that is, if Mr. Southey was represented by counsel the records will show it.

Mr. HENKLE: This was a settlement out of court.

Mr. BOARMAN: This was a settlement, he says, in Mr. Southey's store.

Mr. MACKEY: Oh, I did not understand it. Mr. McIntire talks so low sometimes that I cannot fully understand.

Q. I want to know now whether or not all of the notes that were due by Southey and secured by an incumbrance of the R Street property were paid at that time and surrendered to him.

A. Every one paid was surrendered to him. Mr. Hume is too good a business man to pay notes and not have them surrendered, and Mr. Miller, who was Mr. Southey's counsel, would not have allowed him to do it.

Q. Then the full amount of the indebtedness, save those three undue notes held by Martha McIntire, was paid to you at that time in that settlement by Mr. Frank Hume, and the deeds of trust by which they were secured were released?

A. Yes, sir.

Q. Now, I want to know whether you had any personal ownership or interest in any of these notes that were settled at that time.

A. None whatever.

Q. Do you know to whom they did belong?

A. I signed that settlement as attorney for Henry McIntire. I am under the impression that they belonged to David McIntire and to M. P. King; but it is possible that Henry McIntire may have bought the notes from them after I withdrew the notes from the German-American bank. I withdrew them from the bank in March because at that time there was an understanding that Mr.
876 Hume was going to settle then; but there was some difference of opinion between Mr. Hume, Mr. Miller, and Mr. Southey as to the amount that Mr. Southey owed for groceries or liquor, and the matter went over until July.

Q. I want to know whether or not Mr. Southey at any time since that settlement and down to the bringing of this suit ever made any claim upon you or intimate to you that the three notes held by Martha McIntire of the Streb series had been paid in that settlement.

A. I met Mr. Southey many times in the gas office, where he is employed, and often on the street since that time, and he never intimated anything of the kind, and it was news to me when I heard him charge it.

Q. When the I Street property was advertised for sale to satisfy those three notes, did Mr. Southey make any complaint that the property should not be sold because the debt had been paid?

A. He did not; but, on the contrary, he urged the bidders there to bid higher and told them the advantages of the property. I see from his testimony that he says he was not there. That is not true. I have a distinct recollection of his being there and talking with parties.

Q. On page 29 he says that you and Mr. Hume fixed it between yourselves. What have you to say to that?

A. He refers to the settlement between Mr. Hume and myself when he says that. That is untrue. As I said awhile ago, the matter was negotiated between Mr. Hume, Mr. Southey, and Mr.

Southey's attorney, Mr. Thomas F. Miller (and covered a period of several months), before I was consulted or knew anything about it, and the amount paid to me was paid as the result of their negotiation and judgment.

Q. On page 17 he says that he (Southey) paid you the interest. What do you say as to that?

A. I have no recollection of Mr. Southey paying me any interest whatever. If he did, he paid it to me not for myself, but as agent or attorney for my brother, Henry McIntire, or for my uncle, David McIntire, or for Mr. M. P. King. I really believe, though, he never paid me any interest at all.

Q. On page 25 he says, "I never received any money from Mr. McIntire that I am positive of, only the $2,600." What do you say as to that?

A. I do not know what he means by that statement, $2,600, without he refers to the first two trusts on which he says in his own testimony (pages 4 & 17) he received the money from B. H. Warner—one of $2,100 and one of $500. I am positive that money was not paid by me. I had nothing to do with it, except possibly as agent or attorney for some one. He did receive from me the amount of money on the Streb notes considerably above the amount which he testifies I paid him, although I cannot say positively how much I paid him; but I say that it was considerably above the amount he states, because I never discounted any man's note and charged the rate he says I charged him. The only notes I negotiated
877 with him at all were the Streb notes and the $1,000 note secured by deed of trust on the property at 19th and R streets in favor of M. P. King.

Q. On page 32 he says that you charged him $440 for advertising the house of I street. What have you to say as to that?

A. That I know to be a falsehood. I never had in my experience such a bill as that, and I never paid anything like it. I do not know what the amount was, except it was the amount stated in the bill shown here this afternoon and filed as Exhibit A. H. No. 18 in evidence, from Mr. Warner. Mr. Southey did not pay me a bill of $440 and no one else ever paid me such an amount for advertising.

Q. On page 33 he says that if he had been at home he would have stopped the sale of the I Street property. What have you to say to that?

A. I stated a while ago that I am positive he was present at that sale, because I remember persons with whom he was in conversation.

Q. On page 34 Mr. Southey says that Mr. Hume threw up the sale because the title was in him (Southey) and because all the notes were paid. What do you say to that?

A. The only reason that Mr. Hume ever gave me for not complying with the terms of the sale of No. 2112 I street were those embraced in the note which has been filed in evidence here (Exhibit A. H. No. 8), being written by Mr. Drury, asserting that the title was not good in me, but was in Mr. George C. White.

Q. Did Mr. Hume ever claim to you that those three notes held by Martha McIntire had been paid?

A. He did not. On the contrary, the papers I have filed in evidence show that he called upon me to know whether Mr. Southey had paid them. Those notes which Mr. Hume wrote to me were written some months after my settlement with Mr. Hume on the 19th and R Streets property.

Q. On page 35 Mr. Southey says that he never urged you to sue Mr. Hume for the difference between Mr. Hume's bid and the bid that it was knocked down for to Mr. Swartzell, and that you came to him on S street between 20th street and Connecticut avenue and offered him (Southey) seventy-five dollars to testify against Mr. Hume in such a suit. What have you to say to that?

A. Since that testimony was given by Mr. Southey I went up and looked at the premises on S street between 20th street and Connecticut avenue and I can say positively that I never visited any house on that square or on either side of the street. I have no recollection of ever seeing him at any place at all except on the street, at the gas office, at my office, or at his house on 19th and R streets. I am positive that I never offered him any money to testify. There was nothing I wanted him to testify to. The suit against Mr. Hume was for the difference in the amount for which the property sold, and there was nothing that Mr. Southey could testify to that would aid such a suit. I had nothing to gain by that suit; he had considerable, and he wanted me to sue in order that he might possibly get some amount of money.

878 Q. On page 36 he says that he was opposed to your bringing that suit against Hume. What have you to say to that?

A. He urged me every time he met me. He was in hopes that I might realize something in a suit against Mr. Hume, and that the amount, whatever it might be, would go to him. It was no benefit to me. It was a tax upon me personally, taking my time and money, and made unfriendly feelings, possibly, between Mr. Hume and myself at that time.

Q. You say that he never told you at any time before the bringing of this suit that the last three Streb notes were settled for in that settlement with Mr. Hume?

A. He never said or intimated anything of the kind.

Q. Has he had opportunities of doing so?

A. I have met him many times since that sale.

Q. On page 37 he says that he went down to the court-house and testified for Hume in the suit which you brought against Hume as defaulting purchaser, and that Mr. Norris, in winding up his argument to the jury, said that the title was in Southey. What have you to say to that?

A. That is not true. In the first place, Mr. Southey did not go on the stand as a witness, to the best of my recollection, nor did Mr. Norris make any address to the jury. The case was decided against me by Justice Cox on the ground that I had failed in my advertisement to state that "if the terms of sale were not complied with in so many days the property would be resold at the risk and cost of

the defaulting purchaser." In the early part of the trial Judge Cox called for the advertis-ment before I had finished my testimony, and when he read the advertisement he gave direction to the jury to bring in a verdict on the ground I have stated. I should say there that the judge suggested that he would like to have the case carried to the court in general term, and Mr. Southey urged me to do so, urged me then and there to do so; but I declined without he would furnish the money to conduct the suit.

Mr. MACKEY: I object to all this testimony as to statements not of record and alleged to have been made by the judge.

Q. What had you to do with the trusts from Southey to Warner and Stickney?

A. Nothing whatever that I can call to mind. I may have been named as payee of the notes, as I often was in notes in the office of B. H. Warner & Co. when I was a member of the firm. I have no recollection that I was. If I was, I generally transferred them without recourse. I had no personal interest in either the $2,100 trust or the $500 trust.

Q. Those were deeds of trust of the 19th and R Street property alone?

A. Yes, sir.

Q. And you say that you had no interest in that $500 trust?

A. No, sir; I had not.

Q. You did negotiate the $2,100 of Streb notes secured on the I Street property?

879 A. I did.

Q. And also the $1,000 trust on the 19th and R Street property to secure M. P. King?

A. Those are the only two I negotiated.

Q. Who negotiated the two trusts for $600 each?

A. My brother, Henry McIntire.

Q. You were the trustee in those?

A. Yes, sir; I was trustee in nearly every loan he made, and he made a great many.

Q. Did you have any interest in those at all?

A. Not the slightest.

Q. What was the trust of July 20, 1875, of Southey made to George C. White for?

A. That was the trust to secure Frank Hume in the sum of five thousand and odd dollars, from the proceeds of which he took up the several notes then due on the 19th and R Street property.

Q. That cleared it all up save the three Streb notes which were held by your sister, Martha McIntire?

A. Yes, sir; on No. 2112 I street, under which I sold.

Q. Now, at this sale the property was knocked down to Swartzell and he immediately conveyed to your sister, Martha McIntire?

A. He did, immediately.

Mr. MACKEY: I object to the leading of the witness by counsel in that manner.

WITNESS: I have stated that heretofore.
Mr. HENKLE: I am simply recapitulating. I thought you might forget it.

Q. What did your sister, Martha McIntire, first do with this property?
A. She rented it.
Q. Well, did she convey it to anybody?
A. No, sir; not until some little while after she had it. She then conveyed it to Emma Taylor and subsequently got it back with the property known in these suits as the Pryor property.

Mr. MACKEY: I object to testimony as to whether conveyances were made by or to Emma Taylor. The deeds are the best evidence of that fact, and therefore the evidence of the witness is manifestly inadmissible.

Q. Mr. Swartzell has testified that the property was knocked down to him by Mr. Coldwell, the auctioneer, without his knowledge or authorization. What explanation have you to make of that?
A. It was the custom of Mr. Coldwell as auctioneer to knock down property to some one in the office when the property was sold and expected to be bid in by the holder of the note who was not present. In this case, however, I notified Mr. Coldwell of my authority from my sister, Martha McIntire; but while I was
880 engaged on the premises he knocked down the property to Mr. Swartzell according to his usual custom.

Mr. MACKEY: I object to the witness stating what he told other people as inadmissible.

Mr. HENKLE: Is there anything further that you desire to state, Mr. McIntire?
WITNESS: Nothing else I can think of now.

See p. 101.

Mr. HENKLE: If not, we will call it quits for the present, as I have another engagement at 4 o'clock.

(Adjourned.)

MARCH 28, 1893.

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MARCH 29, 1893.

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Martha McIntire.

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Direct examination.

By Mr. HENKLE:

Q. Miss McIntire, you are one of the defendants in this suit of John Southey?
A. Yes, sir.

Q. Did you ever have any notes made by Louis Streb and Magdalena Streb secured upon property No. 2112 I street northwest, in this city?

A. Yes.

Q. Will you please look at the paper which I now hand you, being Exhibits A. H. Nos. 4, 5, and 6 in the Southey case, and state whether you recognize those notes.

A. Yes, sir.

Q. Did you own those notes?

A. Yes, sir; those were my notes.

Q. From whom did you procure them?

A. My brother, Henry McIntire, got them for me.

Q. Do you know how long ago or when it was?

A. I think it was in 1872 or 1873 somewhere; about twenty years ago.

Q. Did you pay for them?

A. Yes, sir; I bought those notes.

Q. You paid for them yourself?

A. Yes, sir.

Q. Was the interest on the notes ever paid to you?

A. I never knew any interest to be paid.

Q. Well, what did you ultimately do—did you ever get the money?

A. Only in buying in the property.

881 Q. Did you order the property to be sold?

A. Yes, sir; I ordered the property to be sold.

Q. Will you look at the paper I now hand you, being Exhibit A. H. No. 7 in the Southey case, and tell me what that is?

A. This is a note that I wrote to have the property sold.

Q. Well, it is addressed to "Dear Eddie." Who is he?

A. My brother, Edwin A. McIntire.

Q. You intended to direct that when the property was sold, if no one bid upon it up to the amount of your notes, to have it knocked down to you?

A. Yes, sir; to bid it in for me.

Q. I hand you Exhibit A. H. No. 3 in the Southey case, being the deed of trust from Louis Streb and Magdalena Streb to Edwin A. McIntire, trustee, and ask you whether this is the deed of trust by which those notes were secured.

A. Yes, sir; I recognized that as one of my papers belonging to that house.

Q. Did you produce this paper from your papers?

A. Yes, sir; it is one of my papers.

Q. You had it in your possession until when?

A. Until these cases came up, and then, as I said before, when I came across them from time to time I gave them to my brother to put into his safe, so as to be used when necessary.

Q. I ask you to look at the indorsement on the deed which you hold in your hand (Exhibit A. H. No. 3 in this case) and kindly read it.

A. (Reading:) "Nov. 8, 1876. I want this property sold. Sev-

eral of the notes have not been paid, and I suppose they have not settled for the taxes. M. McIntire."

Q. Did you write that?

A. Yes, sir; that is my writing.

A. And that is your signature?

A. Yes, sir.

Q. What did you mean by that?

A. I meant just what I wrote there.

Q. You meant to direct the trustee to proceed to sell the property and collect your notes?

A. Yes, sir; as it had been laying idle too long.

Q. Well, was the property sold in pursuance of that direction?

A. Yes, sir; it was sold.

Q. Do you know who the auctioneer was?

A. I think it was the one who was with Mr. Warner—Mr. Coldwell, I think.

Q. Well, did you bid it in?

A. It was bid in for me.

Q. To whom was the property knocked down, do you know?

A. It was bought for me.

Q. Well, it was bid in for you, but——

Mr. MACKEY (interposing): Now, General, do not lead the witness.

Mr. HENKLE: I am not going to lead the witness.

882 Q. (Continuing:) I want to know whether it was bid in your name at the time or not or whether Mr. Swartzell ever had anything to do with it.

A. Yes, sir; I think that was a mistake in having it in Mr. Swartzell's name.

Q. Was it not knocked down to Mr. Swartzell?

A. It might have been knocked down to him. I understood that was a mistake; that I was to have it. I wanted it and I expected to get it. I understood it was knocked down to Mr. Swartzell through a mistake. Mr. Swartzell did not buy it.

Q. Did Mr. Swartzell make you a deed to correct that mistake?

A. He made a deed right over to me.

Q. Well, did you place that deed from Mr. Swartzell on record?

A. Indeed I do not know whether I did or not. I have forgotten.

Q. Well, how long did you hold that property?

A. I held it, I think, for about six years.

Q. Did you collect any rents?

A. Yes, sir; I got the rents.

Q. There never was any question about your possession or right of possession or right to the rents?

A. None at all.

Q. Where did you ever hear it first questioned?

A. Since this case was commenced.

Q. Well, what did you do with the property finally?

A. After I had it for about six years I sold it.

Q. To whom?

A. I sold it to Emma Taylor.
Q. Do you remember in what year that was?
A. Six years afterwards would make it 1882—about 1882.
Q. What did you get for it?
A. She gave me two thousand dollars for it.
Q. Was it cash or how?
A. Yes, sir; to the best of my knowledge it was in cash; at least it was given to me in cash, anyhow. I made something on it the reason I sold it.
Q. Do you remember what you gave for it?
A. I gave eleven hundred and fifty dollars for it.
Q. And you sold it to Emma Taylor for how much?
A. For two thousand dollars.
Q. After collecting the rents for six years?
A. Yes, sir.
Q. Through whom did you make that transaction?
A. Through my brother here, Edwin A. McIntire.
Q. Were you brought in contact with Emma Taylor in the transaction?
A. No, sir; not at all.
Q. You did not see her?
A. I never saw her in any transaction.
Q. How did you come to make the deal with her?
883 A. Through my brother, Edwin A. McIntire.
Q. Well, did he call your attention to it and tell you that he could sell it for you?
A. Yes, sir; he told me he could get something for it. I told him, as I had always told him, that if he came across any cheap property, out of which we could make money, to let us know, and we would try to make a little or what we could.
Q. He informed you that he could sell the property and make something on it?
A. Yes, sir.
Q. And you authorized him to sell it?
A. Yes, sir.
Q. Did you ever get it back again?
A. Yes, sir; I bought it back some time afterwards.
Q. About how long?
A. I think it was about two or three years afterwards, if I remember aright. I bought that and the F Street property.
Q. The F Street property is what is known as the Pryor property?
A. Yes, sir; the Pryor property.
Q. That was then a vacant lot?
A. Yes, sir; just a lot with an old hut or shanty on it.
Q. You bought those properties for what?
A. Twenty-five hundred dollars, from Emma Taylor.
Q. And she conveyed it to you?
A. Yes, sir.
Q. Well, now, since that purchase in 1884 have you been in undisputed possession of it?

A. Yes, sir.
Q. Receiving the rents?
A. Yes, sir.
Q. Paying taxes?
A. Yes, sir.
Q. And exercising all acts of ownership over it?
A. Yes, sir.

Mr. MACKEY: You might as well testify yourself, General, as to be leading the witness in this way.

Mr. HENKLE: Maybe it would be better. I am just saving time, but I will drop the question if you object to it. I simply wanted to economize time.

Q. What did you pay her for these properties, did you say?
A. Twenty-five hundred dollars I paid her for them.
Q. What was that in?
A. In cash, for I did not have anything else but cash to do it with.
Q. You paid the cash to whom?
A. To my brother, Edwin A. McIntire.
Q. And he did the business for you?
A. Yes, sir.
884 Q. Has anybody disputed your right to it since you bought it back—that is, before this suit was brought?
A. No, sir; not before this suit was brought.
Q. You said that you never saw Emma Taylor in any of these transactions. What did you mean by that?
A. I never saw her in anything of this kind. I meant that I never had any business directly with her.
Q. You did not mean to say that you never saw her?
A. No, sir; for I did see her once at my brother's office, and only once.

Mr. HENKLE: That is all.

Mr. MACKEY: I will want to see this written out, of course, before I cross-examine.

Mr. HENKLE: Then you will have to extend the time for the taking of testimony in these cases.

Mr. MACKEY: I will now, as far as I can, proceed with the—

Cross-examination.

By Mr. MACKEY:

Q. I just want to ask you now, Miss McIntire, about these Streb notes, and I will wait until your testimony is written out before cross-examining you about other matters. When these notes (Exhibits A. H. Nos. 4, 5, & 6) were delivered to you, did they have all that writing on the back?
A. I do not remember whether they had or not.
Q. You cannot remember whether or not they had all that writing on the back?

A. No, sir; I have had other things to think about. This has been twenty years ago.

Q. Was any of this writing placed on them after you got them?

A. I cannot remember all these things in that time. I had them part of the time and gave them to my brother.

Q. Henry McIntire gave them to you?

A. Yes, sir; he bought them for me.

Q. He bought them from whom?

A. From Streb. They are the Streb notes. My brother Henry, who bought those notes from me, was Laura Galliher's father.

Q. Shortly after they were bought in December, 1872?

A. In 1872 or 1873 I bought them.

Q. You bought them in 1872 or 1873 from your brother Henry?

A. I did not say that I bought them from him. He bought them for me.

Q. Were these black erasures on those notes at that time?

A. I cannot remember.

Q. Do you remember when you gave those notes to your brother, Edwin A. McIntire?

A. Not a very great while ago. They were on there then.

Q. Had these notes ever been out of your possession since the time that you had them?

885 A. No, sir; I do not remember giving them to anybody. I hardly gave my property away.

Q. Then those black erasures must have been put on before you got them?

A. I suppose they must have been.

Q. When did you write your name, Martha McIntire, in red ink there; do you remember?

A. I forget.

Q. Did you ever have these notes in bank?

A. No, sir; I never had them in bank, for I never had notes in any bank account. I do not know whether my brothers had them in bank or not. My brother Henry held them. As I said before, my brothers took charge of my affairs until I came down here, and they may have put them in bank.

Q. Your brother Henry bought them for you in 1872, while you were in Philadelphia?

A. Yes, sir.

Q. Did he send them to you?

A. No, sir; my brothers kept my papers and things until I came down here; and when my brother Henry died, then they were given to me.

Q. You came here when?

A. In 1882.

Q. Then you were in Philadelphia when these notes were bought, you say?

A. Yes, sir; when he bought them for me.

Q. You were in Philadelphia when this sale took place?

A. No, sir; that was in 1876, and I was here in 1876.

Q. I thought you came here in 1882?

A. Well, I could come here two or three different times every year, I suppose, if I wanted to.

Mr. MACKEY: I cannot go any further with the cross-examination until her examination-in-chief is written out and I have an opportunity to examine it.

Mr. HENKLE: Well, I will have to object unless my time for taking testimony is extended. I would not care if there were not a question of time about it.

Mr. MACKEY: No time will be lost at all, because I can improve the meantime by cross-examination of Mr. Edwin A. McIntire.

WITNESS: But time is lost to me to come again. I have a blind mother at home.

Mr. MACKEY: Well, Miss McIntire, you were put on the stand by my courtesy and examined before I cross-examined your brother, Edwin A. McIntire, who is supposed to be still on the stand awaiting cross-examination by me.

Mr. HENKLE: No; she was not put upon the stand by your courtesy. I have the right to put in my proof any shape I please.

Mr. MACKEY: No; you have not that right, but, however, we will not consume time by discussing the matter. I am now ready
886 to cross-examine Mr. Edwin A. McIntire, and I wish Miss Martha McIntire to retire during my cross-examination of her brother.

(NOTE.—Miss Martha McIntire here retired from the room.)

See p. 117.

EDWIN A. MCINTIRE further deposes and says, being recalled for cross-examination.

By Mr. MACKEY:

Q. These are three (Exhibits A. H. Nos. 4, 5, & 6 in this case) of the notes I understand you to say were part of the eight notes which you say you negotiated with Southey?

A. They are.

Q. To whom did you negotiate those notes?

A. I think the first one was to Thomas Lewis, of the War Department; the second one was to M. P. King, possibly Mr. Wilkins, of the War Department, and the others were to Henry and David McIntire.

Q. Southey indorsed them, did he not, when he delivered them to you?

A. Certainly. The notes were not complete until he indorsed them.

Q. To whose order did he indorse those notes?

A. I have forgotten. The notes themselves will show; the deed of trust will show, if they do not. I have forgotten now, but it was some one I could use for that purpose before I could transfer them.

Q. The notes are payable to the order of John Southey, are they not?

A. They are.

Q. Now, he indorsed them, "Pay to the order" of somebody, and that is stricken out. Who is that somebody?

A. It may have been some member of my family.

Q. Do you know what member of your family?

A. I do not remember. I could not tell except by the deed of trust.

Q. The deed of trust was made before this indorsement was put on them. How would the deed of trust show?

A. I was a little premature, possibly, in answering in that way. Upon reflection, I do not remember now what that is.

Q. You do not know, then, to whose order they were indorsed?

A. I cannot tell now; it seems to be obliterated.

WITNESS: Let me look at them.

Q. You cannot remember, without looking at them, to whose order they were indorsed?

A. No, sir; I cannot recall to mind.

Q. Can you tell by looking at them?

WITNESS: If you will let me look at them I will see whether I can or not.

Mr. MACKEY: Here they are.

887 A. It seems to be some one by the name of McIntire, but I cannot tell positively; I do not recognize the writing.

Q. Why were they made payable to the order of that person?

A. I do not remember now.

Q. Was that person really the purchaser of them?

A. No, sir; because I remember distinctly that they were held by a man named Lewis, whose name does not seem to be on them. No; he did not hold those, by the way; he held one of the earlier notes, and if I could see all the notes I could tell.

Q. Did the person to whom these notes were indorsed by John Southey advance the money on them?

A. Well, I cannot say that, because, as I told you, I do not know to whom they were indorsed by him.

Q. Whom did you get the money from to advance to Southey?

A. The last six notes were sold to either David or Henry McIntire; that may be the last name there.

Mr. BOARMAN: You mean the first six notes?

WITNESS: No; the last six notes; there were eight notes. That last name there is very likely Henry McIntire, because I notice in my settlement with Mr. Hume that I assigned as attorney for Mr. McIntire, but I would not say positively.

Q. Then you got the money from Henry McIntire to pay Southey for these notes, did you?

A. I would not like to say that positively. It is very likely I did.

Q. Is it not the fact that you bought them yourself and advanced the money to Southey on them and then sold them to these different parties?

A. No, sir; I did not have the money to do that with.

Q. Whom do you mean by "members of your family;" Henry McIntire and whom else?

A. David.

Q. Anybody else?

A. They are the only two that I likely sold them to, without it is one of my sisters in Philadelphia; I have three sisters there.

Q. Did you sell them to your wife?

A. No, sir; I never sold them to her. My wife had money invested in some notes, though I do not think in those, but I cannot say positively.

Q. How did your name come on the back of those notes?

A. As guarantor, I suppose.

WITNESS: They are not signed by — "without recourse," are they?

Q. They are signed by you "without recourse." Then how could you be guarantor?

A. They are signed "E. A. McIntire" to obligate me on those notes.

Q. Is not the note for forty-eight months signed or indorsed "Without recourse, E. A. McIntire"?

A. Yes, sir; but it is also signed "E. A. McIntire" below
888 that, I presume. Well, I can state a theory about it, but you do not want that.

Q. Why would you guarantee those notes, since you had no interest in them at all?

A. I had to do that very frequently in notes that I disposed of to show the parties that everything was all right, in my belief.

Q. You think, then, it was your brother, Henry McIntire, who bought these notes and sold them to your sister Martha?

A. Yes, sir.

Q. Why is not the name of Henry McIntire on the back of them if he sold them to your sister Martha?

A. That he would answer if he were living; I cannot answer for him.

Q. Your name is written immediately above that of Martha McIntire, which is written in red ink. How does that happen?

A. For the reason I have just stated.

Q. When were these erasures made, or did you make them?

A. I could not tell. I cannot identify the erasures.

Q. Cannot you tell whether you made those erasures?

A. These notes appear to have been in bank at one time; these erasures, I presume, of course, were not on these notes when they were in bank. I presume these erasures were made at the time of the sale; but I do not know positively about that.

Mr. MACKEY: I do not ask you what you presume. I ask for your recollection about it. If you have no recollection, say you have not and that will be sufficient.

WITNESS: It does not seem to be sufficient for you.

Q. I will ask you whether you have any recollection as to who made these erasures upon the back of these notes.

A. I told you that I do not have any recollection about it.

Q. Do you know who placed them in bank for collection?

A. I only know that they were in bank from the lettering on them, but I could not tell you who deposited them there. I know that those notes were deposited in the German-American bank by identifying the handwriting on the back of them.

Q. Deposited by whom?

A. That I cannot tell.

Q. If you know that they were deposited there, how is it you cannot tell who deposited them?

A. I can tell that they were deposited there by identifying the writing on the ends of the notes.

Q. They could only have been deposited by Henry McIntire or yourself?

A. We were not the only depositors in that bank.

Q. I mean to your account. Either you or Henry McIntire had the notes?

A. Henry McIntire had them at the time.

Q. Did you put them there?

A. No, sir; I know I did not put any of her notes there.

889 Q. Now, you say that eleven hundred and seventy-five dollars was bid for the property by you for your sister, Martha McIntire?

A. Yes, sir.

Q. Was that the full value of the property?

A. It was the highest bid which could be gotten to cover her notes.

Q. You were trustee at that sale, were you not?

A. I think very likely I was.

Q. You say you think you were. Do you not know whether you were or not?

A. Yes, sir; there is the deed of trust which shows. I did not know it positively; I had forgotten.

Q. You as trustee put in a bid from your sister, Martha McIntire?

A. By her written authority, as I have done many a time for other people.

Q. You think that was a fair price for the property?

A. Yes, sir.

Q. That is about what it was worth?

A. It was worth what could be gotten for it. Property is worth what could be gotten for it at public auction. There was a big crowd there and spirited bidding.

Q. So you think it brought its full value?

A. Yes, sir; in my estimation it brought more than Mr. Hume would bid on it, he holding the second deed of trust on the property, and he lost his second deed of trust rather than bid five dollars more than was bid by Martha McIntire.

Q. And notwithstanding that Emma Taylor was willing a couple of years afterwards to give two thousand dollars for it?

A. Times had changed. It was more than a couple of years afterwards.

Q. It nearly doubled that price in two years?

A. It was more than two years; it was six years.

Q. Well, when she did buy it it was nearly doubled in value?

A. No, sir; I do not say that. There was a new roof put on the property. There was an old shingle roof on it at the time and a tin roof was put on and sewer pipes put in between the time of the public sale and the time of the sale to Emma Taylor. It was a different house when she sold it to Emma Taylor.

Q. When you intended to bid for your sister Martha at that sale and did bid for her and directed the auctioneer, as you say, to knock the property down to Martha McIntire, why did you make immediately afterwards a deed to Swartzell of the property?

A. Because the auctioneer's book showed that the sale was made to Swartzell. I never made a deed to a person other than the one mentioned in the auctioneer's book.

Q. But immediately afterwards Swartzell turned around and made a deed to your sister, Martha McIntire?

A. Yes, sir; the deeds were simultaneous.

Q. You made a deed to Swartzell and he simultaneously made a deed to Martha McIntire?

A. Yes, sir.

890 Q. Why was the deed to Swartzell put on record and not the deed to Martha McIntire?

A. I do not know.

Q. Where is the deed to Martha McIntire?

A. The deed to Martha McIntire was cancelled.

Q. What do you mean by cancelled?

A. Mr. Swartzell has testified that he cancelled it.

Q. How did he cancel it?

A. I do not remember; destroyed it, I think.

Q. Did you see him destroy it?

A. I cannot recollect positively. His testimony bears out my recollection that he cancelled it, and I think he destroyed it entirely when he made his deed to Emma Taylor, if that is the time you allude to.

Q. I mean when he made the deed to your sister. You said that he made the deed to your sister simultaneously with the making of the deed by you to him?

A. Yes, sir; and that deed was cancelled when he made the subsequent deed to Emma Taylor.

Q. Notwithstanding the fact that you bid this property in at the sale for your sister, Martha McIntire, you made the deed to Swartzell, and Swartzell made a deed simultaneously to your sister Martha, and now you have no explanation why the Swartzell deed was put on record and not the deed to your sister Martha?

A. I did not attend to putting any deeds on record at all at that time. They were attended to by Mr. Coldwell, in the office. He almost always took them and placed them on record. I cannot ex-

plain why the deed to Martha McIntire was not recorded, unless that it might have been given or sent to her.

Q. Was it not easier for the auctioneer to have changed the name from Swartzell to Martha McIntire on his book?

A. No, sir; that is not allowed to be done on the auctioneer's book.

Q. Would not that have been easier than to make two new deeds?

A. That was never allowed to be done for the reason—if you want the reason—the reason we had objection to the auctioneer altering his book was in the event of his being called as a witness; and in this case, for instance, he could not say that the property was knocked down to Martha McIntire.

Q. Did your sister, Martha McIntire, pay to you eleven hundred and seventy-five dollars, the price bid for the property?

A. She surrendered the notes. The notes were paid by the sale. She did not pay any cash at all; nothing but the expenses of the sale.

Q. The amount of the notes and the expenses of the sale made altogether eleven hundred and seventy-five dollars?

A. No, sir; I did not say that.

Q. Was there any surplus?

A. I cannot recollect now whether there was or not.

Q. If there was any surplus you never paid it to Southey?

891 A. I know that there was no surplus going to Southey. My recollection is that there was a small surplus due to her.

Q. How could the surplus be due to her, she not being the owner of the property at the time of the sale?

A. My recollection is that the property did not sell for quite enough to pay her notes after taking out the expenses of the sale.

Q. No money passed by that transaction except the surrender of the notes to you?

A. That is all.

Q. As soon as the notes were paid why were they not surrendered to Southey?

A. The very fact of the notes not being marked "Paid by sale" is positive proof to me that there was not enough money to pay the notes.

Q. There was enough to pay two of them. Why were they not surrendered?

A. I cannot tell you that. I know there was not enough to pay all of them.

Q. When Emma Taylor paid you two thousand dollars for this property for your sister how did she pay it to you?

A. I have no recollection.

Q. Do you not remember whether she paid it to you in cash or by check?

A. She may have by both or either.

Q. Have you any memorandum at all of that payment made by her?

A. I cannot find anything at all as yet.

Q. Notwithstanding all the papers you have produced in this case in reference to the Southey matter, you cannot find any of that date?

A. And if you had asked me before this suit commenced for those papers I could have sworn that I did not have one-tenth of what I have produced. I am not through with my search yet; if I find anything more I will produce it, and I think I have shown that disposition all through.

Q. Did you take any receipt from your sister for the two thousand dollars that you paid her and which Emma Taylor gave you?

A. I would not naturally have taken a receipt from my sister; if I turned the deed over to her that would be all—any deed or paper.

Q. And how did you turn it over to her, in cash or by check?

A. That I have no recollection of. I very frequently paid her money in cash and very frequently by checks, but I always cashed my checks and gave her the money.

Q. Have you any checks showing that this two thousand dollars was paid to her by checks?

A. I do not think I have. I do not know whether I have or not.

Q. When she sold to Emma Taylor who continued to collect the rents?

A. I collected for my sister all the time.

892 Q. But after she sold to Emma Taylor who collected the rents?

A. I do not recollect.

Q. You do not recollect whether you collected the rents for Emma Taylor or not?

A. I do not.

Q. Have you any books to show whether you collected the rents for Emma Taylor or not?

A. My books do not run back that far.

Q. In this Exhibit A. H. No. 21 in this Southey case, purporting to be a copy of the statement filed by Frank Hume in the case of Southey *vs.* Hume, equity, No. 50291, I see you have down here at the bottom for trustee's commission and advertisements of two sales $165. What was that for?

A. Sales of the property at the corner of 19th and R streets.

Q. Did you sell that property?

A. I advertised it, and was entitled to half commissions under deed of trust.

Q. Did you advertise it twice?

A. I might have advertised that property once, and, possibly, the I Street property once; I cannot tell; I think I advertised the property at the corner of 19th and R streets twice. That account, however, was looked at then and agreed to by Mr. Southey as being correct.

Q. You say that you collected the rents for your sister of that property while she held it?

A. Yes, sir.

Q. Have you any accounts, receipts, books, or checks, or anything to show that you were collecting the rents for her, other than your mere statement of the fact?

A. I have nothing before 1885 or 1886.

Q. So I understand your answer to be to this question that outside of the mere statement of the fact you have no book, receipt, check, or writing of any sort which would tend to prove that you collected the rents for your sister Martha?

A. No; I do not say that. I say that my old ledger was destroyed by fire; as to the other papers, I do not know whether I have them or not.

Q. I did not ask you to state that you do not know whether you have them or not. I ask you to state now whether you have them or have not them.

A. You asked me that very thing now. I say that I cannot tell you whether I have them or not.

Q. If you have them will you produce them?

A. Certainly. I will produce anything of the kind that I have.

Q. Will you produce them at the next session?

A. It is a matter of impossibility for me to produce them at the next session, as I have not the time, but if I find them I will produce them.

Mr. HENKLE: We are not going to extend the sessions for
893 the taking of testimony indefinitely in this case for the purpose of searching for papers.

Q. Do you know who the tenants were at the time Emma Taylor owned this property?

A. No, sir; I could not tell at all, other than that they were colored people.

Q. Mr. Southey borrowed, as you have testified, one thousand dollars from Mr. King and twelve hundred dollars from David McIntire in two different transactions of six hundred dollars at each time. What did you do with the money that was borrowed by Southey; did you pay it to him?

A. I have no distinct recollection as to Mr. King's matter; it was either paid to Mr. Southey or possibly used to take up one of the notes, as he says, but I will not say positively. As to the other loans, they were not those of David McIntire, but Henry McIntire, and he attended to them himself. I have no knowledge of those transactions more than I recollect in one of them in which the deed of trust was not put on record at the time that a release of a previous trust was put on record (in that previous deed of trust I negotiated the notes secured by it) I saw Henry McIntire pay to Southey the amount of money for those notes.

Q. When you negotiated these Streb notes to Southey and had the settlement with him did you not surrender one of the thousand-dollar notes that was upon the R Street property?

A. I did not surrender it, because I did not have it to surrender. I may have paid it off for him, but I have no recollection of that.

Q. So you did not give him the money which was required to pay off that one-thousand-dollar note?

A. I have already stated that I have no recollection of the exact circumstances of the settlement in the negotiation of those notes, but I paid him, I am certain, more than he says—far more than he says.

Q. Did you give him a check for three hundred and twenty-five dollars on the Second National bank of this city?

A. I can say most positively no.

Q. Or on the Central National bank—(you were depositing then in the Central National bank)?

A. No, sir.

Q. You did not give him a check for three hundred and twenty-five dollars, then?

A. I say that I have no recollection exactly of the particular sums that went to him, but I know that I gave him more than he said I did.

Q. Did you give it to him by check or in cash?

A. I say again that I have no recollection exactly how the money went to him.

Q. If you gave it to him in money you would have taken a receipt from him for the money, would you not?

A. Possibly I would; very likely I would.

Q. Have you that receipt?

894 A. I have none of the old papers scarcely of that date.

Q. You have produced a good many of them in this case.

A. Not of that date.

Q. If you gave it to him by check you would have the check, would you not?

A. I ought to have it, but whether I have it or not I do not know.

Q. Will you look and see if you have it?

A. You ask me to do three or four weeks' work. I am not able to do it, as I am not well enough.

Mr. HENKLE: And you have not time enough to do it, either, if this examination runs along in this way.

Q. You say that Mr. Southey was at the sale in conversation with some person?

A. Yes, sir.

Q. Do you know what person that was?

A. Yes, sir.

Q. Who was it?

A. Mr. Benjamin F. Wilkins.

Q. Is he alive?

A. I presume so. I have not seen him for quite a length of time.

Q. Does he live in this city?

A. He did when I last saw him—somewhere near this property.

Mr. MACKEY: I believe that is all. Do you think of anything else, Mr. Boarman?

Mr. BOARMAN: I do not now.

Mr. HENKLE: Then the cross-examination is closed?

Mr. MACKEY: I do not want to be as precise as that until I have seen this written out. I do not think of anything else just now, but I may have something to ask which I have forgotten after reading this over.

EDWIN A. McINTIRE.

* * * * * * *

MARCH 31, 1893—Friday, 2 o'clock p. m.

Met pursuant to agreement.

Appearances: S. S. Henkle, Esq., solicitor for the defendant Edwin A. McIntire, who is present with the defendant Martha McIntire, and also the examiner.

Owing to the illness of Mr. Mackey and other engagements of Mr. Boarman, adjourned to—

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APRIL 8, 1893.

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895 APRIL 13, 1893.

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MARTHA MCINTIRE, who deposes and says, being recalled for further—

Cross-examination.

By Mr. MACKEY:

Q. In what way did Emma Taylor pay you for this property which we call the Southey property? You say she paid you two thousand dollars for it, and now I want to know whether she paid that in cash or by check.

A. Let me see. The Southey property—I do not remember how she paid me. She gave it to my brother. He transacted the business for me.

Q. Well, you got the money from your brother?

A. Yes, sir; he obtained the money for me.

Q. Well, how did he pay you—in money or by check?

Mr. HENKLE: She did not say that she got the money from her brother.

Mr. BOARMAN: She said that Miss Taylor paid it to her brother for her.

A. Sometimes he would give a check to my sister and she put it in bank. She had a bank account and I had not. Now, Mr. Mackey asks how Mr. McIntire paid her.

Q. What year was that?

A. I cannot think of the year except by referring to the Streb notes that you asked me about. I bought them in 1872. The property was sold at public sale in 1876, and then I held it for six years and that would be 1882. Then she bought it back from me in 1882 and she held it for two years. We came here in 1882. If it

was after we came here, then he gave it to my sister, for she had an account in bank. If not, then he held it for me or sent it to me in Philadelphia. I know we were here in 1882. He did not do it then. I cannot recall to my mind exactly how it was, but I know I got it.

Q. Whether by check from your brother or in money?

A. If he gave it to me by check I gave it to my sister to put in bank.

Mr. HENKLE: Well, if you do not remember, do not guess about it.

WITNESS: I do not remember. I cannot recall it to mind.

MARTHA McINTIRE.

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(Adjourned.)

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896 *Testimony for Plaintiffs in Rebuttal.*

SEPTEMBER 6, 1893.

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Emily Miller.

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Direct examination.

By Mr. MACKEY:

Q. Where do you live?

A. No. 2308 I street northwest, in this city.

Q. Did you ever live at No. 2112 I street northwest, in this city?

A. Yes, sir.

Q. From whom did you rent the house?

A. Well, my mother, Henrietta Crusoe, who is dead now, rented it from Mr. Edwin A. McIntire.

Q. How long have you been living where you live now?

A. Three years.

Q. Where did you live before you went where you are living now?

A. On 19th street northwest.

Q. How long did you live on 19th street?

A. One year.

Q. Where were you living before you moved to 19th street?

A. I moved from 19th street where I am now living.

Q. But where were you living before you moved to 19th street?

A. No. 2112 I street northwest, in this city.

Q. You moved from Mr. McIntire's house, No. 2112 I street northwest, to 19th street?

A. Yes, sir.

Q. Then it was about four years ago that you moved from Mr. McIntire's house, No. 2112 I street northwest?

A. Yes, sir.

Q. How long had you been living at that house, No. 2121 I street northwest, when you moved to 19th street?

A. Twelve years.

Q. During all that time to whom did your mother or yourself pay the rent?

A. Mother more often carried it down to Mr. McIntire's office, and when she did not have time I carried the rent.

Q. The rent was paid to Mr. McIntire?

A. Yes, sir.

Q. Did you ever see a lady by the name of Emma Taylor in connection with that house?

A. No, sir.

Q. Were there any repairs made on that house while you were there?

897 A. Yes, sir; Mr. McIntire had the kitchen roof tinned and the house painted outside and some little repairs outside.

Q. Were the repairs extensive?

A. No, sir.

Q. Do you suppose that fifty dollars would cover the whole expense of that repairing?

Mr. HENKLE: Objected to as leading.

A. I do not know.

Q. That house was painted outside?

A. Yes, sir.

Q. How much did that cost?

A. Not more than six dollars ($6).

Q. Did the fixing of the doors and windows outside of that house cost more than six dollars?

Mr. HENKLE: Objected to as leading.

A. Well, there was very little repairing outside.

Q. How much do you suppose it cost; two dollars or three dollars or five dollars or six dollars?

Mr. HENKLE: Objected to as leading.

A. I do not think it cost more than three or four dollars; there was very little of it.

Q. And then this tin roofing was put on the kitchen?

A. Yes, sir.

Q. The roof of the house itself was not tinned, but just the kitchen part?

A. Just the kitchen part.

Cross-examination.

By Mr. HENKLE:

Q. You say that your mother paid the rent?

A. Yes, sir.

Q. How do you know?

A. Because we had the receipts put in a book.

Q. You know it from the book?
A. Yes, sir.
Q. You have seen the book?
A. Yes, sir.
Q. Is that the only way you know it?
A. Well, Mr. McIntire's name is signed on the receipts.
Q. That is the only way you know it?
A. Yes, sir; I know it was paid, because I know I paid it and I know she paid it.
Q. How do you know she paid it?
A. I used to see her with the money.
Q. Did you ever see your mother pay the money over to Mr. McIntire at the office?
A. No, sir; I could not say that, because I was not there.
898 Q. You cannot swear to that?
A. No, sir; only by the books can we swear to.
Q. Who set it down in the book?
A. Mr. McIntire, of course, when we paid it set it down in the book.
Q. Did you ever see your mother pay the rent to him?
A. I did sometimes when he came to the house.
Q. How often was that?
A. I could not say, because it is so far back.

Redirect examination.

By Mr. MACKEY:

Q. You went down to the office of Mr. McIntire sometimes yourself and paid the rent?
A. Yes, sir.

Recross-examination.

By Mr. HENKLE:

Q. Was there a hydrant put in the yard of that house?
A. There was a hydrant put in that house after we went there.
Q. Was there a water-closet put in the side yard?
A. There was none there when we went there, but we heard that there was one put there afterwards.
Q. There was a new tin roof put on?
A. Only the kitchen roof.

her
EMILY x MILLER.
mark.

Subscribed and sworn to before me this 6th day of September, 1893.

ALBERT HARPER, *Examiner.*

(Adjourned.)

NOVEMBER 2, 1893.

* * * * * * *

WILLIAM F. MACLELLAN, who, being recalled, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. I show you signatures of Emma T. McIntire as follows: That to a paper filed in the matter of the estate of Adeline McIntire, No. 2165, in the orphans' court of the District of Columbia, indorsed "Renunciation of Emma T. McIntire as an executrix" and sworn to by her on December 11, 1885; also that to a paper filed in the same case indorsed "Renunciation of Emma T. McIntire, one of the executors," dated November 27, 1885, and addressed to
899 Edwin A. McIntire; also the signature of Emma T. McIntire as a witness to a paper purporting to be a contract in duplicate between Medford & Waldron and Martha McIntire and filed as Exhibit A. H. No. 18 in the case of Pryor *vs.* McIntire, equity, 12761, in the supreme court of the District of Columbia, and ask you if you have compared those signatures with the signature "Emma Taylor" in these various deeds, viz., a deed purporting to be from Barbara Brown and Emma Taylor to Martha McIntire, dated April 25, 1881, and filed as Exhibit A. H. No. 1 in the case of Brown *vs.* McIntire, equity, No. 12977, in the supreme court of the District of Columbia; a deed dated May 31, 1884, purporting to be between Emma Taylor and Martha McIntire and filed as Exhibit A. H. No. 14 in said case of Pryor *vs.* McIntire; a deed dated May 14, 1883, purporting to be between Emma Taylor and Alfred Brown and filed as Exhibit A. H. No. 12 in the said case of Pryor *vs.* McIntire; a deed dated December 13, 1882, purporting to be between Emma Taylor and Joseph Forrest and filed as Exhibit A. H. No. 14 in the case of William E. McIntire *vs.* Edwin A. McIntire, equity, No. 10745, in the supreme court of the District of Columbia, and a deed dated September 6, 1884, purporting to be between Emma Taylor and Martha McIntire and filed as Exhibit A. H. No. 2 in the said case of Brown *vs.* McIntire. Now, my question is whether you have made any comparison between the signatures of Emma T. McIntire in those papers presented to you and the signature of Emma Taylor to those deeds handed you, and what is the result of that comparison as to the person who wrote those signatures.

Mr. HENKLE: I object to the question and to any answer thereto upon the ground that some of the papers named in the question which are introduced for the purpose of comparison are not in either of the pending cases, but are introduced simply for comparison of handwriting, which is incompetent and illegal, and I further object that the evidence, if it is competent at all, is not in rebuttal, but should have been offered in chief.

WITNESS: Have I looked at all these papers before?

Mr. MACKEY: No; I think not. I think there are some there which you did not examine before.

Mr. HENKLE: I desire the examiner to note that the witness to prepare himself for answer has called for and been shown by the

counsel a card containing photographs of other signatures to which he had heretofore testified.

A. My judgment is that the same person wrote them—that is, that the person who wrote these signatures of Emma T. McIntire to these papers wrote the signatures of Emma Taylor to these deeds.

Q. You mean that the same person who wrote the signature Emma Taylor to those deeds wrote the signature Emma T. McIntire to those papers?

A. Yes, sir.

Q. Look at these three signatures of Emma T. McIntire as
900 signed to her testimony at page 591 of the record in the case of Pryor *vs.* McIntire, also to her testimony at page 44 in the case of Hayne *vs.* McIntire, and also to her testimony at page 115 in the case of Brown *vs.* McIntire, and state whether you have made any comparison of those signatures with the signature of Emma T. McIntire in those three papers which I have shown you containing the signature of Emma T. McIntire, and what is the result of that comparison in respect of those signatures—that is, whether it is a natural signature or a forced signature or however you would express it.

Mr. HENKLE: What signature do you mean?

Mr. MACKEY: The signature of Emma T. McIntire as subscribed to the pages of her testimony in the cases I have mentioned.

Mr. HENKLE: You ask whether those signatures are forced or natural?

Mr. MACKEY: Yes.

WITNESS: Are they written by the same person?

Mr. MACKEY: Those signatures of Emma T. McIntire upon those papers shown you a while ago and the signatures of Emma T. McIntire upon these three pages of testimony just shown you are admitted signatures of Emma T. McIntire.

Mr. HENKLE: And your question is whether those signatures of Emma T. McIntire upon those pages of testimony have the appearance of being forced or natural?

Mr. MACKEY: Yes.

A. Well, it has the same general character with the exception of the in-tial letter "T;" that is an entirely different style of letter from those in the earlier signatures.

Q. If a person had been accustomed always to making the initial letter "T" as you see it in those three signatures of Emma T. McIntire which I gave you at first, namely, the papers from the orphans' court and the contract between Medford & Waldron and Martha McIntire, what would you say of the change in the formation of that in-tial letter "T" as it appears in the signature of Emma T. McIntire upon those three pages of testimony?

A. Well, I should say that it was a little forced; I should hardly call this the capital letter "T." If asked to state what this initial letter of the middle name in these signatures of Emma T. McIntire upon these pages of her testimony was, I should not say that it was the in-tial letter "T," for it might be called a "Y" or even an "S."

Q. What would you say as to its being an intentional deviation from the natural letter "T" made by her in her other signatures?

Mr. HENKLE: Objected to.

Mr. MACKEY: I withdraw the question.

Q. State whether you find any deviation from the in-tial letter "T" in the signatures of Emma T. McIntire to those papers which I first handed you and the initial letter "T" in the signatures of Emma T. McIntire upon those three pages of testimony, and state whether, in your judgment, those deviations are intentional or not.

901 Mr. HENKLE: Objected to——

Mr. MACKEY (interposing): I desire the witness to state whether, in his judgment, that deviation appears to be intentional or not.

Mr. HENKLE: I object that the witness cannot testify as to the intention of the party who made the signatures.

Mr. MACKEY: I ask the witness to state whether, in his judgment, there is any appearance of intentional deviation or not—that is, to say whether that is an accidental deviation or an intentional one.

Mr. HENKLE: To which I object for the reason stated.

A. I should say that this initial letter of the middle name in the signature of Emma T. McIntire to these pages of her testimony was rather a forced attempt to make a capital letter "T." It bears as much resemblance to a capital letter "T" as it does to a capital letter "Y" or a capital letter "S" or even to a capital letter "C."

Q. You say that it is a forced attempt to make a capital letter "T." Is it a forced attempt to make the capital letter "T" different from the capital letter "T" appearing in the signatures of Emma T. McIntire to those first papers shown you?

A. If it was intended for the capital letter "T" I should say it was rather forced. I do not think it is anything. I should not be able to tell what that initial letter of the middle name in these signatures of Emma T. McIntire upon these three pages of her testimony was intended for.

Mr. HENKLE: I object that the witness cannot tell what the intention of the writer was in making it.

Q. I hand you a paper purporting to be a power of attorney by Sarah J. McIntire to Martha McIntire, dated April 19, 1881, and acknowledged before one Christopher Edie, a notary public, on the same date, and filed as Exhibit A. H. No. — to the deposition of one Purves in the case of Pryor *vs.* McIntire, equity, No. 12761, in the supreme court of the District of Columbia, and ask you whether you have made any comparison of the signature "Edwin A. McIntire" thereon and the handwriting in the body of that paper with the signature "E. A. McIntire" to this paper purporting to be a contract between Medford & Waldron and Martha McIntire (Exhibit A. H. No. 18 in said case of Pryor *vs.* McIntire), and with the hand

writing in the body of that contract, and what you have to say as to the handwriting being that of the same person?

A. I should say that it was unquestionably written by the same person.

Mr. HENKLE: I object to the question and answer for the reason that said power of attorney is not a proper paper in the case and cannot be introduced for the purpose of instituting comparison of handwriting.

WILLIAM F. MACLENNAN.

* * * * * * *

902 GEORGE W. F. SWARTZELL being recalled as a witness—

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. You have testified as to the circumstances of Mr. Edwin A. McIntire bringing you a deed cancelled and then making another deed. Do you remember the names of the parties to those deeds?

A. I do not.

Q. You remember neither the parties in the cancelled deed nor the grantee in the deed you signed?

A. I do not.

Mr. HENKLE: Cross-examination waived.

GEO. W. F. SWARTZELL.

* * * * * * *

Testimony for Defense in Surrebuttal.

MARCH 3, 1894.

* * * * * * *

Edwin A. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. On page 126 of the record of testimony in this case of Southey *vs.* McIntire the witness Emily Miller says that the painting done at No. 2112 I street would not have cost over six dollars, and the other repairs three or four dollars. Will you state what painting and repairs were done, and the actual cost?

Mr. MACKEY: Objected to as not proper on surrebuttal.

A. The house was painted throughout. It was a frame house, and the whole front was painted. To the best of my recollection, it took two men as much as two weeks to do the painting. They had a new roof put upon that property, which cost upwards of one hundred and fifty dollars.

Q. Do you remember what the painting cost?

A. I do not remember, but I remember that it took two men more than two weeks. The inside and outside of the house was painted, and a new roof was put on, which cost upwards of one hundred and fifty dollars, and there were sewers and water put in which each cost that much, if not quite that much, and a new fence put up.

Q. What did the fence cost?

A. Fifty dollars. The yard was paved, and there was papering and plastering done in the house.

Q. Any new steps?

903 A. And new steps put up to the second story.

Q. Can you state, approximately, what the whole repairing cost?

A. Well, I should have to say, at a mere guess, that it cost in the neighborhood of five to eight hundred dollars. This repairing I speak of was done by Martha McIntire.

Q. When was it done?

A. It was done in the early period of her holding the property, before she sold to Emma Taylor.

Q. On page 134 of the record in this case, the witness MacLennan, speaking of the letter "T" in certain signatures of Emma T. McIntire made recently, said, "I should not say it was the initial letter 'T,' for it might be called a 'Y' or even an 'S.'" What do you say about that?

A. I say that shaped letter is not original with Emma T. McIntire at all; it is a style adopted by the Spencerian school.

Mr. MACKEY: You are speaking of her signatures to her testimony?

Mr. HENKLE: I believe so. Is it not?

WITNESS: Yes. She has no uniform way of writing her signatures; sometimes she writes her signature "Emma T. McIntire," sometimes "E. T. McIntire," and sometimes she makes the capital letter "E" commencing at the top of the letter and sometimes commencing at the line. The letter "T" in signatures of hers that I have are written sometimes one way and sometimes another, according to the styles adopted by the different schools of penmanship, and the "M" she sometimes makes like a large "lower case 'm.'"

Cross-examination.

By Mr. MACKEY:

Q. Have you any signature of your sister, Emma T. McIntire, made before the institution of these suits?

A. I presume I have a number.

Q. Which are signed like her name to her testimony in this cause?

A. I do not know whether I have any in my possession or not, but I have seen her write her name like that.

Mr. MACKEY: If you have, produce it and let us see it.

EDWIN A. McINTIRE.

Subscribed and sworn to before me this 3rd day of March, 1894.
ALBERT HARPER, *Examiner.*

NOTE.—The examiner is requested by the solicitors for the respective parties to enter of record the following stipulation as to the evidence in this case:

It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, equity, No. 12761; Brown *vs.* McIntire, equity, No. 12977; Ackerman *vs.* McIntire, equity, No. 12978; Southey *vs.* McIntire, equity, No. 13034, and Hayne *vs.* McIntire, equity, No. 13177, in the supreme court of the District of Columbia, so far as the same may be relevant to the issues raised on this case of Southey *vs.* McIntire (equity, No. 13034) in respect of Emma Taylor, Martha McIntire, or Edwin A. McIntire, may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein, subject to all and any objection as to the materiality and competency thereof which could have been made if the same had been taken herein.

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EXHIBIT A. H. No. 1

Is a deed of trust dated July 7, 1875, "between John Southey and Mary Southey, his wife, of the first part, and George C. White, trustee, of the second part, all of the city of Washington, in the District of Columbia." Recites, "That whereas said John Southey is justly indebted unto Frank Hume in the full sum of $5,200, for which amount he has four several promissory notes of the said John Southey, bearing even date with this indenture, each for the sum of $1,300 and payable respectively at one, two, three, and four years after date, with interest at 10% per annum, interest payable semi-annually; and whereas the said parties of the first part are desirous to secure the punctual payment of said notes and all interest, costs, and expenses which may accrue thereon." The deed then conveys to said trustee lots 25 and 26, in square 134, of A. P. Fardon's subdivision of said square; also lot 21, in square 77. It then recites the usual covenants of a deed of trust to secure an indebtedness, permitting the grantor to use and occupy the premises until default, and upon default providing for a sale by the trustee and empowering him to convey to the purchaser. It provides for a commission of 5% in case of sale. It is acknowledged on the day of its date and recorded in Liber 789, folio 233.

EXHIBIT A. H. No. 2.

This indenture made this ninth day of July in the year of our Lord one thousand eight hundred and seventy-five (1875) between Edwin A. McIntire of the city of Washington in the District of Columbia as trustee of the first part and John Southey of the same place of the second part: Whereas the said John Southey and Mary

his wife heretofore made and executed four certain deeds of trust one dated December 12th, 1872, and recorded in Liber No. 705, fol. 73 &c. the second dated August 8th, 1873, and recorded in Liber 729 fol. 1 &c. the third dated September 4th, 1874, and recorded in Liber 758, fol. 153 &c. and the fourth dated October 10th, 1874, and recorded in Liber 762, fol. 370 &c. by said four deeds of trust conveying to the said party of the first part and to his heirs and assigns, the following-described real estate in the District of Columbia, viz: All those certain lots or pieces of ground known and described as
905 lots twenty-five (25) and twenty-six (26) in A. P. Fardon's and others subdivision of square numbered one hundred and thirty-four (134) in trust to secure the payment of certain indebtedness therein mentioned, all of which will more fully and at large appear upon reference to said four deeds of trust, and whereas so much of said indebtedness as is due from the said above-described premises has been fully paid and the said party of the second part is desirous to have the same released and discharged from all lien, claim, demand, or incumbrance by reason of said deeds of trust. Now therefore this indenture witnesseth that the said party of the first part, trustee, as aforesaid, for and in consideration of the premises aforesaid, and further the sum of one dollar, lawful money of the United States to him now in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released and conveyed and doth by these presents grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns, forever, all the hereinbefore-described premises and all the rights, privileges, and appurtenances to the same belonging or in anywise appertaining to have and to hold the same unto the said party of the second part his heirs and assigns, forever, as in his first and former estate, free, released and discharged of and from all lien, claim or incumbrance by reason of said four deeds of trust.

In testimony whereof the said party of the first part, as trustee, as aforesaid, hath hereunto set his hand and seal on the day and year first hereinbefore written.

EDWIN A. McINTIRE, *Trustee.* [SEAL.]
HENRY McINTIRE,
Holder of Notes Above Mentioned.

Signed, sealed, and delivered in the presence of—
J. T. COLDWELL.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, J. T. Coldwell, a notary public in and for the District aforesaid, do hereby certify that Edwin A. McIntire, party to a certain deed bearing date on the ninth day of July, A. D. 1875, and hereto annexed, personally appeared before me, in the District aforesaid, the said Edwin A. McIntire being personally known to me to be the

person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this ninth day of July, A. D. 1875.

[SEAL.] J. T. COLDWELL,
Notary Public.

Endorsed: Deed of release. Edwin A. McIntire, trustee, to John Southey. Received for record July 20, 1875, and recorded
906 in Liber No. 789, folio 352 *et seq.*, one of the land records for Washington county, in the District of Columbia, and examined by S. Wolf, recorder. Geo. F. Schayer, dep.

EXHIBIT A. H. No. 3.

This indenture, made this twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-two (1872) between Louis Streb and Magdalena his wife of the city of Washington in the District of Columbia of the first part, and Edwin A. McIntire, trusteee, of the same place of the second part:

Whereas the said Louis Streb and Magdalena his wife are justly indebted unto John Southey of the said city of Washington in the sum of twenty-two hundred dollars ($2,200) for which amount the said parties of the first part have signed and delivered to the said John Southey eight certain promissory notes, bearing even date herewith and payable in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two and forty-eight months respectively after date, each note being drawn for the sum of two hundred and seventy-five dollars with interest at the rate of ten per cent. per annum until paid and being desirous to secure the punctual payment of said notes when and as the same shall respectively become due and payable, with all interests and costs due and accruing thereon, they therefore execste these presents.

Now therefore this indenture witnesseth, that said parties of the first part, for and in consideration of the premises, and the sum of one dollar in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the party of the second part, his heirs and assigns, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain lot or piece of ground with the messuages or tenements thereon erected, and known and described as follows: Being part of lot twenty-one (21) in square numbered — (77) and beginning at a point on the south line of North "I" street, seventeen (17) feet eastwardly from the northwestern corner of said lot thence running eastwardly on the line of said street eighteen (18) feet, thence southwardly on a line at right angles with said street ninety (90) feet eleven (11) inches, thence west eight feet seven and a half inches (8 ft. 7½ in.)

thence south to the south line of said lot, thence west nine (9) feet four and a half (4½) inches, thence north to the place of beginning together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, whatsoever, either at law or in equity, of the said parties of the first part, of, in and to the said piece or parcel of land and premises.

907 To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts nevertheless hereinafter mentioned and declared, and none other, that is to say, in trust to permit the said Louis Streb and Magdalena his wife their heirs or assigns, to use and occupy the said described premises, and the rents, issues and profits thereof, to take have and apply to and for their sole use and benefit, until default be made in the payment of said notes or any of them or either of them or any instalment of interest due thereon, or any proper cost, charge, commission, half commission or expense, in and about the same.

And upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Louis Streb and Magdalena his wife their heirs or assigns at their cost.

And upon this further trust, that upon default being made in the payment of the said notes or either of them or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, or expense, in and about the same, then and at any time thereafter, to sell the said piece or parcel of land and premises at public auction, in front of the premises, after at least ten days' notice of the time, place and terms of sale by advertisement, in some one or more of the newspapers printed and published in the said city of Washington; which said terms of sale shall be as follows, viz: The amount of indebtedness secured by this deed of trust unpaid, with the expense of sale, in cash, and the balance at six, twelve and eighteen months for which the notes of the purchaser, bearing interest from the day of sale, and secured by a deed of trust on the property sold, shall be taken. A deposit of one hundred dollars shall be required of the purchaser at the time of sale, and all conveyancing and revenue stamps shall be at the expense of the purchaser.

And upon this further trust, upon full compliance with the terms of sale to convey the property sold in fee-simple to the purchaser or purchasers thereof, at his, her, or their cost and expense, and without any liability to see to the application of the purchase-money, and out of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain, as compensation a commission of ten per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of the said notes

and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Louis Streb and Magdalena his wife, their heirs or assigns.

And the said parties of the first part do hereby covenant with the said party of the second part his heirs and assigns, that all taxes upon the said land shall be duly paid, and that the building on said parcel of land shall be kept insured, during the continuance of this trust in some good and responsible fire-insurance com-
908 pany or companies, to the satisfaction of the party of the second part, in the sum of seventeen hundred dollars, for the benefit of the debt hereinbefore described, and the policy, or policies, of insurance be assigned to the said party of the second part as trustee under these presents; and further, that in case the said parties of the first part their heirs or assigns shall fail to pay taxes or to keep said property so insured, then the taxes may be paid, and the property be insured for the amount aforesaid by the legal holder of the note before mentioned, and the amount of taxes and premium paid shall be considered a part of the expense of said note secured hereby, in default of payment of which the said party of the second part, shall have power to sell said property hereby conveyed, as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided.

And it is further agreed that if the property shall be advertised for sale under the provisions of the deed, and not sold, then the said trustee shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

LOUIS STREB. [L. S.]
MAGDALENA STREB. [L. S.]

Signed, sealed, and delivered in the presence of—having first been duly stamped, the word "notes" in 13th line, 1st page, being first interlined—

T. DRURY.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, T. Drury, a justice of the peace in and for the county aforesaid, do hereby certify that Louis Streb and Magdalena, his wife, parties to a certain deed bearing date on the twelfth day of December, A. D. 1872, and hereto annexed, personally appeared before me, in the county aforesaid, the said Louis Streb and Magdalena, his wife, being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Magdalena, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this twelfth day of December, A. D. 1872.

T. DRURY, *J. P.* [SEAL.]

(*Note.*)

Nov. 8, 1876.

I want this property sold. Several of the notes have not been paid, and I suppose they have not settled for the taxes.

M. McINTIRE.

909 Endorsed: Deed of trust. Louis Streb and Magdalena Streb to Edwin A. McIntire, trustee for John Southey. $2,200. Lot 21, sq. 77. Received for record on the 19 day of December, A. D. 1872, and recorded in Liber No. 705, folio 75, one of the land records for Washington county, in the District of Columbia, and examined by S. Wolf, recorder.

EXHIBIT A. H. No. 4.

$275.00. WASHINGTON, D. C., *Dec'b'r* 12, 1872.

Thirty-six months after date we promise to pay to the order of John Southey two hundred and seventy-five dollars, with interest at the rate of ten per cent. per annum, value received.

Due ——.

LOUIS STREB.
MAGDALENA STREB.

(NOTE.—Cannot copy indorsements.)

EXHIBIT A. H. No. 5.

$275.00. WASHINGTON, D. C., *Dec'b'r 12th*, 1872.

Forty-two months after date we promise to pay to the order of John Southey two hundred and seventy-five dollars, with interest at the rate of ten per cent. per annum, value received.

Due ——.

LOUIS STREB.

(NOTE.—The other name is torn off.)

(Cannot copy endorsements.)

EXHIBIT A. H. No. 6.

$275.00. WASHINGTON, D. C., *Dec'b'r 12th*, 1872.

Forty-eight months after date we promise to pay to the order of John Southey two hundred and seventy-five dollars, with interest at the rate of ten per cent. per annum, value received.

No. 8. Due ——.

LOUIS STREB.
MAGDALENA STREB.

(Cannot copy endorsements.)

EXHIBIT A. H. No. 7.

DEAR EDDIE: If no one bids above the amount of my notes on house No. 2112 I street tomorrow, ask Mr. Caldwell to consider my bid for that amount.

MARTHA McINTIRE.

P. S.—Would it not be well to see if Mr. Hume will take the place?

M. M.

910 EXHIBIT A. H. No. 8.

WASHINGTON, D. C., *Nov. 25th*, 1876.

Frank Hume, Esq.

DEAR SIR: Having carefully examined the title to part of lot 21, in square 77, I find that the same is not in Edwin A. McIntire, but is good in George C. White, trustee, by deed from John Southy and wife, dated July 7, 1875.

Taxes not reported.

Yours truly, SAM'L T. DRURY,
Att'y-at-law.

D'R MR. McINTIRE: Above you will find report of Mr. Drury, which is after a careful examination of the title.

F. HUME.

EXHIBIT A. H. No. 9.

To E. A. McIntire, trustee of John and Mary Southey, under a deed of trust bearing date on the 12th day of December, 1872, and under which you are about to make sale of the premises therein described to satisfy the debt secured thereby:

You will please take notice that I hold a claim secured to me by deed of trust from the said grantors to George C. White, trustee, bearing date on the 7th day of July, 1875, and duly recorded in Liber 789, folio 233 *et seq.*, one of the land records for the District of Columbia, and that I claim, as the holder of the second deed of trust, so much of the residue of the proceeds of such sale as will be sufficient to satisfy said claim, the same being an unsatisfied balance due me from the said Southey on the sale of another piece of real estate secured under said deed as well as the amount of a judgment in my favor against him, both of which claims are subordinate to the debt secured by the said deed of trust to you. You will therefore hold the said surplus to be applied in satisfaction of my said demands or to the extent thereof.

Very respectfully, FRANK HUME.

Washington, D. C., November 21st, 1876.

EXHIBIT A. H. No. 10.

Office of Frank Hume, wholesale grocer, successor to Poole & Hume, 454 Pennsylvania avenue.

WASHINGTON, *Dec.* 29, 1875.

E. A. McIntire, Esq.

D'R SIR: You will please let me know if Southey took up the Streb note due last week; also, if not, what does he proposes, and oblige,

Very truly yours, FRANK HUME.

911 EXHIBIT A. H. No. 11.

Mr. E. A. McIntire:

In reference to those notes of Mrs. Streb, I have been disappointed in receiving money, and that is why I have not been down to see you.

On Friday next you may depend upon my calling and settling the matter without further delay.

Please make this explanation to the holders of the notes.

Yours, &c., JNO. SOUTHEY.

EXHIBIT A. H. No. 12.

WASH'N, D. C., *March* 31, '75.

Dr. Prentiss, cashier:

Please hand to Mr. E. A. McIntire six notes of $200 each, drawn by John Southey (3 due Sept. 7, '75, and 3 due Oct. 13, '75), deposited to my credit in your bank.

Colls. 7889.
7890.
7891.
7892.
7893.
7894.

DAVID McINTIRE.

(On back.)

I received the within-mentioned notes.
May 8, '75.

E. A. McINTIRE.

EXHIBIT A. H. No. 13.

WASH'N, D. C., *March* 31, '75.

Dr. Prentiss, cash.:

Please hand to E. A. McIntire note of Magdalena & Louis Streb for $275, due June 15, '75, and deposited by me in your bank for collection.

Coll. # 7422.

DAVID McINTIRE.

(On back.)

I have received the within-mentioned note.
May 8, '75.

E. A. McINTIRE.

912 EXHIBIT A. H. No. 14.

WASH'N, D. C., *March* 31, '75.

Dr. Prentiss:

Please hand to Mr. E. A. McIntire the 4 notes of John Southey, amounting to $1,000, due August 8, 1875, and deposited in your bank to my credit for collection.

Resp'y, &c., MARTIN P. KING.

Colls. # 1806, '7, '8, '9.

(On back.)

Colls. # 1806, '7, '8, '9.

SOUTHEY.

I have received the within notes.
May 8, '75.

E. A. McINTIRE.

EXHIBIT A. H. No. 15

Is a deed of trust, dated the 8th day of August, 1873, "between John Southey and Mary, his wife, both of the city of Washington, in the District of Columbia, of the first, and Edwin A. McIntire, of the same city and District, of the other part." Recites: "Whereas the said John Southey, standing justly indebted unto Martin P. King in and for the sum of $1,000 money loaned and advanced, hath made, signed, and delivered to the said Martin P. King and made payable to his order four notes of even date, each note being for the sum of $250, payable in one year from date and bearing interest at 10% per annum, payable quarterly, and being desirous to secure the punctual payment of said notes when the same shall become due and payable, with all interest and costs due and accruing thereon, they therefore execute these presents." The deed they conveys to said McIntire lots 25 and 26 in Fardon's *et al.* subdivision of square 134, with all improvements, ways, easements, etc.

Then follow the usual covenants of a deed of trust to secure an indebtedness, permitting the grantor to use and occupy the premises until default be made, and providing for a sale in case of default of the payment of the notes of either of them or any installment of interest, and empowering the trustee to convey to the purchaser in fee-simple, etc., and provides for a commission of 10% for the trustee in case of sale. It is acknowledged the day of its date and recorded in Liber 729, folio 1, of the land records, on August 9, 1873.

In addition to the endorsement by the recorder are the words, in the handwriting of E. A. McIntire, "Paid by Frank Hume. Released July 20, '75."

913 EXHIBIT A. H. No. 16

Is a similar deed of trust, dated the 4th day of September, 1874, "between John Southey and Mary, his wife, both of the city of Washington and District of Columbia, of the first part, and Edwin A. McIntire, of the same place, of the other part." Recites, "Whereas the said John Southey, standing justly indebted unto Henry McIntire in and for the sum of $600 money loaned and advanced, hath made, signed, and delivered to the said Henry McIntire and made payable to his order 3 notes of even date herewith, each note being for the sum of $200, and payable in one year from date, and bearing interest at the rate of 10 % per annum, payable quarterly, and being desirous to secure the punctual payment of said notes when the same shall become due and payable, with all interest and costs due and accruing therein, they therefore execute these presents." The deed then conveys to said trustee, in trust, lots 25 and 26, in Fardon's *et al.* subdivision of square 134. Then follow the usual covenants of a deed of trust to secure an indebtedness, permitting the grantor to use and occupy the premises until default, and on default to sell and convey to the purchaser; provides for a commission of 10 % to the trustee in case of sale. The deed is acknowledged on the day of its date and recorded September 10, 1874, in Liber 758, fol. 153, of the land records of the District of Columbia. In addition to the endorsement of the recorder are the words, "Released upon payment of the indebtedness by Frank Hume. Release recorded July 20, '75."

EXHIBIT A. H. No. 17.

This indenture made this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-four (1874) between John Southey and Mary his wife, both of the city of Washington, in the District of Columbia of the first part, and Edwin A. McIntire of the same place of the other part. Whereas the said John Southey standing justly indebted unto Henry McIntire in and for the sum of six hundred dollars ($600) money loaned and advanced, hath made, signed and delivered to the said Henry McIntire and made payable to his order three notes of even date herewith each note being for the sum of two hundred dollars and payable in one year from date and bearing interest at the rate of ten per cent. per annum payable quarterly, and being desirous to secure the punctual payment of said notes when the same shall become due and payable, with all interest and costs due and accruing thereon, they therefore execute these presents. Now therefore this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises, and the sum of one dollar by the said party of the second part paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bar-
914 gain, sell, alien, enfeoff, release and convey unto the said party of the second part his heirs and assigns, the following-

described real estate, situate in the city of Washington, to wit: All those certain lots or pieces of ground known and described as lots twenty-five (25) and twenty-six (26) in A. P. Fardon and others' subdivision of square numbered one hundred and thirty-four (134) being same ground conveyed by A. P. Fardon to John Southey by deed dated June 12th, 1871. Together with all improvements, ways, easements, rights, privileges and appurtenances and hereditaments to the same belonging, or in anywise appertaining and all the estate, right, title, interest and claim whatsoever either at law or in equity of the said parties of the first part, of, in, and to the said pieces or parcels of land and premises. To have and to hold the said pieces or parcels of land — premises with the appurtenances unto and to the use of the said party of the second part his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared, that is to say, in trust to permit the said John Southey his heirs and assigns to use and occupy the said premises until default be made in the payment of said notes or either of them or any instalment of interest due thereon, or any proper cost, charge, commission or expense about the same. And upon the full payment of all of said notes and the interest thereon, and all other proper charges, cost, commissions and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises to the said John Southey his heirs or assigns at his and their cost. And upon this further trust that upon default being made in the payment of the said notes or either of them or any instalment of interest due thereon, or any proper cost, commission, or expense in and about the same, then and at any time thereafter to sell the property at public auction upon such terms as the said trustee may deem advisable and upon a full compliance with the terms of sale to convey the premises in fee-simple to the purchaser or purchasers thereof without any liability to see to the application of the purchase-money, and out of the proceeds of said sale to pay all proper costs and to retain a commission of ten per cent. on the amount of the sale, next to pay whatever may be due on said notes, and the interest thereon, whether the same be due or not, and lastly to pay the remainder, if any, to the said John Southey his heirs or assigns. It is further agreed that if the property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half the commission above provided to be computed on the amount of the debt hereby secured. It is further provided that this property shall be kept insured to the satisfaction of the trustee.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

JNO. SOUTHEY. [L. S.]
MARY SOUTHEY. [L. S.]

Signed, sealed and delivered in the presence of—
T. J. LAZENBY.

915 DISTRICT OF COLUMBIA, }
County of Washington, } *ss*:

I, T. J. Lazenby, a justice of the peace in and for the county aforesaid, do hereby certify that John Southey and Mary Southey, his wife, parties to a certain deed bearing date the tenth day of October, A. D. 1874, and hereto annexed, personally appeared before me, in the county aforesaid, the said John Southey and Mary Southey being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary Southey, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this fifteenth day of October, A. D. 1874.

T. J. LAZENBY, [L. S.]
Notary Public.

Endorsed: Deed of trust. John Southey *et ux.* to Edwin A. McIntire, trustee, to secure H. McIntire. Oct. 10, '74. $600. Rec'd for record Oct. 16, '74, and recorded in Liber No. 762, folio 370, one of the land records for the District of Columbia, and ex'm'd by S. Wolf, recorder. Indebtedness paid by F. Hume. Released. Recorded July 20, '75.

EXHIBIT A. H. No. 18.

WASHINGTON, D. C., *Dec'r* 26, 1876.

Mr. E. A. McIntire, trustee, to Brainard H. Warner, Dr., real-estate broker and auctioneer.

To advertising part lot 21, sq. 77, as p'r Republican bill	$22 75	
To advertising part lot 21, sq. 77, as p'r Republican bill	32 50	
To auctioneer's comm. on $1,175	29 50	
" District tax	2 94	
" bellman	1 00	
		$88 69
Cr. by reduction cash p'd by McIntire		19 50
		$69 19

Sold to G. W. F. Swartzell at $1,175.
Settled March 3–2, '77.

B. H. WARNER.

916 EXHIBIT A. H. No. 19.

OFFICE OF FRANK HUME, WHOLESALE GROCER, &C.,
WASHINGTON, *July 10th*, 1875.

E. A. McIntire, Esq.

D'R SIR: You will please make out deed of release for the R & 19 St. property, as p'r our agreement, when I will pay all the incumbrances on it. Please do this at your earliest convenience and oblige

Very truly yours, FRANK HUME.

EXHIBIT A. H. No. 20.

B. H. Warner & Co. ac. with John Southey, Dr.

1876.					
Aug.	3.	To rent Bowen's, 2112 I St. N. W....	$20		
Sept.	4–11.	To " " "	20		
Oct.	7.	" " " "	18	50	
Nov.	6.	" " " "	21	50	
Dec.	5.	" " " "	20		
Oct.	17.	By check # 208			55 58
Dec.	5.	" cash.....			20 42
"	"	" "			19
"	"	" "			5
			$100		$100

EXHIBIT A. H. No. 21.

Copy of Statement Filed by Frank Hume, Esq., in Case of Southey vs. Hume, Equity, 5192.

Ackl. of 2 deeds.....	1	00
Southey, 4 notes of $250 each.....	1,000	
6 mos. int. on same.....	50	
" 3 notes of $200 each.....	600	
9 mos. int. on same.....	45	
" 3 notes of $200 each.....	600	
9 mos. int. on same....	45	
Streb, 3 notes of $275 each.....	825	
Int. on 2 from Dec. 12, '74	32	08
" " 1 " Dec. 12, '72	73	
Trustee's comm. & advertisement on 2 sales.....	165	
	3,436	08

Rec'd, Wash'n, D. C., July 20, 1875, of Frank Hume his check for thirty-four hundred and thirty-six $\frac{8}{100}$ dollars, for which amount I hereby release all encumbrance on property situate at corner of 19th & R Sts. N. W., for which I am trustee.

(Signed) EDWIN A. McINTIRE,
Trustee for Henry McIntire.

917 EXHIBIT A. H. No. 22.

MARCH 17TH, 1875.

Justice Webster:

Please pay to bearer amount collected in cause # 512, McIntire *vs.* Southey.

H. McINTIRE, *Plaintiff.*

EXHIBIT A. H. No. 23.

In Justice's Court, before Chas. P. Webster, a Justice of the Peace in and for the District of Columbia, the 17th Day of November, A. D. 1875.

Henry
[HEUGH]* McINTYRE, Plaintiff, *vs.* JOHN SOUTHEY *et al.*, Defendants. } No. 512. Judg't for Plaintiff by Confession for $63.67.

Take notice that on the 19th day of November, 1875, at 3 p. m., the defendant will supersede the above judgment and offer as surety John O'Brien, of No. —, 19th-St. Circle N. W., Washington, D. C.

JNO. SOUTHEY.

Henry
To [Heugh]* McIntire, pl'ff.

CHAS. P. WEBSTER,
Justice of the Peace.

JOHN O'BRIEN,
Contractor, 1506 19*th St.*

Petition for Leave to File Deed.

Filed May 25, 1894.

In the Supreme Court of the District of Columbia.

CATHERINE SOUTHEY *et al.* *vs.* EDWIN A. McINTIRE *et al.* } Equity. No. 13034.

To the honorable the justice holding court in equity No. 2:

Your petitioners, the complainants in the above entitled cause, respectfully represent:

1st. That during the hearing of the above-entitled cause, to wit, during the reading of the testimony taken therein, counsel for complainants became aware that through inadvertence they had omitted to offer in evidence in said cause a certified copy of a certain deed of trust, dated the 12th day of December, 1872, from John Southey and wife to Edwin A. McIntire, and recorded in Liber 705,
918 page 73, one of the land records for said District, and upon such discovery and during the hearing of said cause on

[*Erased in copy.]

Thursday last counsel for the complainants asked the counsel for the defendant during said hearing to consent to the filing by the complainants of a certified copy of said deed of trust, and then and there counsel for defendants consented thereto, and thereupon complainants' counsel ordered a copy to be made and certified by the recorder of deeds of said District of said deed of trust; that shortly after said order had been given for said copy to be made as aforesaid counsel for defendants notified counsel for complainants that his client, Edwin A. McIntire, had expressed to him his disapproval of the consent theretofore given as aforesaid, and the said counsel for defendants recalled said consent.

2nd. Your petitioners further say that the said deed of trust, among other things, contains the following recital, to wit: "Whereas the said John Southey standing justly bound and indebted to Mrs. Lettie McIntire in and for the sum of twenty-two hundred dollars money loaned and advanced, and has endorsed to the order of the said Mrs. Lettie McIntire eight certain promissory notes (drawn by Louis Streb and Magdalena Streb to the order of the said John Southey) each of said notes being for the sum of two hundred and seventy-five dollars, with interest at the rate of ten per cent. per annum; the notes bearing date the 12th day of December, A. D. 1872, and payable in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two and forty-eight months respectively after date. And whereas the said John Southey, being desirous to secure the punctual payment of the said notes, when and as the same shall respectively become due and payable, with all interests, costs, *and* etc., due and accruing thereon, they therefore execute these presents." The said deed of trust being one of the deeds of trust released by deed of release executed by E. A. McIntire to John Southey and recorded in Liber 789, page 352, of said land records, the said release being an exhibit filed by defendants in this cause; and your petitioners file herewith and attach hereto a certified copy of the said deed of trust above mentioned.

3rd. Your petitioners further say that the said deed of trust and the contents thereof are material to their case, and they therefore pray that they may be allowed by the court to file the certified copy of said deed of trust (hereto attached) as an exhibit in this cause.

2nd. And if the court should deem that it has no discretion to grant the leave hereinbefore prayed that the court will, in the exercise of its jurisdiction when it appears that important and material testimony not in the case at the hearing is obtainable, enter a preliminary decree directing further testimony to be taken therein.

3. And for such other and further relief as the exigency of the case may require.

FRANKLIN H. MACKEY,
Sol. for Compl'ts.

I, William W. Boarman, having been first duly sworn, do de-

pose & say that I am one of the counsel in the above-en-
919 titled cause (Southey *v.* McIntire), and that I have read the petition above subscribed by Franklin H. Mackey, also one of the solicitors of the complainants therein ; that I know the contents of said petition, and that the facts therein set forth are true to the best of my knowledge and belief.

WILLIAM W. BOARMAN.

Subscribed and sworn to before me this 25 day of May, A. D. 1894.

J. R. YOUNG, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

Endorsed: Let this be filed in this case. A. B. Hagner. May 29, '94.

Deed from John Southey et ux. to E. A. McIntire.

Filed May 25, 1894.

G. C. S., Liber No. 705, folio No. 73 *et seq.* Delivered to trustee Feb. 10, 1873. R. R.

John Southey *et ux.* to Edwin A. McIntire. } Recorded Dec. 19th, 1872, 12 m. Trust.

This indenture, made this twelfth day of December in the year of our Lord one thousand eight hundred and seventy-two (1872), between John Southey and Mary, his wife, both of Washington, in the District of Columbia of the first part, and Edwin A. McIntire of the same place of the second part — Whereas the said John Southey standing justly bound and indebted to Mrs. Lettie McIntire in and for the sum of twenty-two hundred dollars, money loaned and advanced and has endorsed to the order of the said Mrs. Lettie McIntire eight certain promissory notes (drawn by Louis Streb and Magdalena Streb to the order of said John Southey) each of said notes being for the sum of two hundred and seventy-five dollars with interest at the rate of ten per cent. per annum, the notes bearing date the twelfth day of December, A. D. 1872, and payable in six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, and forty-eight months respectively, after date. And whereas the said John Southey being desirous to secure the punctual payment of the said notes when and as the same shall respectively become due and payable with all interest, costs, &c., due and accruing thereon, they therefore execute these presents. Now this indenture witnesseth, that the said parties of the first part for and in consideration of the premises and the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released and conveyed and

do by these presents grant, bargain, sell, alien, enfeoff, release
920 and convey unto the party of the second part his heirs and assigns the following-described real estate, situate in the city of Washington, District of Columbia, to wit: All *that* certain lots or pieces of ground known and described as lots twenty-five and twenty-six in A. P. Fardon and others' subdivision of square numbered one hundred and thirty-four (134) and also all other ground and property of the said John Southey (real, personal and mixed) in the city aforesaid or elsewhere, together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same or any part thereof belonging, or in anywise appertaining and all the estate, right, title, interest, and claim whatsoever either at law or in equity of the said parties of the first part, of, in, and to the said parcel of land and all other property wheresoever located as aforesaid. To have and to hold, the same with the appurtenances unto and to the use of the said party of the second part his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned, that is to say. In trust to permit the said John Southey his heirs and assigns, to use and occupy the said described premises and the rents, issues, and profits thereof, to take, have and apply for his and their sole use and benefit until default be made in the payment of said notes or either of them or any instalment of interest due thereon, or any proper cost, charge, commission or expense in and about the same. And upon full payment of all of said notes and the interest thereon and all other proper costs, charges, commissions, half commissions and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said John Southey, his heirs and assigns, at his and their cost. And upon this further trust that upon default being made in the payment of the said notes or either of them, or any interest, cost, charge, commission or expense in and about the same, then and at any time thereafter to sell the said land and premises at public auction after at least ten days' notice of the time and place of sale by advertisement in one or more of the newspapers published at Washington upon such terms as the said party of the second part may think most advantageous. And upon this further trust, upon full compliance with the terms of sale to convey the property sold in fee-simple to the purchaser or purchasers without any liability to see to the application of the purchase-money; and out of the proceeds of said sale or sales to pay all proper costs, charges and expenses, to retain as compensation a commission of ten per cent. on the whole amount of said sale or sales, secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon whether the same be due or not and lastly to pay the remainder if any, to the said John Southey, his heirs or assigns. And it is further agreed that if the property shall be advertised for sale under the provisions of this deed and not sold then the said trustee shall be entitled to one-half the commission above provided to be computed on the amount of the debt hereby secured.

In testimony whereof, the parties of the first part have
921 hereunto set their hands and seals on the day and year first hereinbefore written.

JOHN SOUTHEY. [L. S.]
MARY SOUTHEY. [L. S.]

Signed, sealed, and delivered in the presence of—
T. DRURY.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, T. Drury, a justice of the peace in and for the county aforesaid, do hereby certify that John Southey and Mary, his wife, parties to a certain deed bearing date the twelfth day of December, A. D. 1872, and hereto annexed, personally appeared before me, in the county aforesaid, the said John Southey and Mary, his wife, being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary Southey, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this twelfth day of December, A. D. 1872.

T. DRURY, *J. P.* [SEAL.]

Endorsed: Fee, $2.25. This is to certify that the within is a true and verefied copy of an instrument as recorded in Liber No. 705, fol. 73 *et seq.*, one of the land records of the District of Columbia. Geo. F. Schayer, dep. recorder of deeds. May 24, 1894.

Affidavit of E. A. McIntire.

Filed May 29, 1894.

In the Supreme Court of the District of Columbia, Sitting in Equity.

CATHARINE SOUTHEY *et al.*
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 13034.

Edwin A. McIntire, one of the defendants in the above-entitled cause, being duly sworn, doth depose and say—

That early in the month of December, 1872, he, the said McIntire, acting as a real-estate broker, assisted in the sale of premises known as part of lot 21, in square 77 (house No. 2112 I street northwest, Washington, D. C.), to Louis and Magdalena Streb, taking as purchase-money eight promissory notes of $275 each to the order of John Southey, then the owner of the property.

The deed of trust securing these notes was duly executed, delivered, and recorded, and is filed in said cause as "Exhibit A. H. No. 3."

922 That said Southey desiring said McIntire to negotiate the sale of said notes, McIntire suggested that as the security was not ample the said Southey give an additional trust upon other property owned by said Southey at 19th and R streets and on lots in which he claimed to be interested near Georgetown, and, further, that as the notes were not considered to be in as marketable condition in their shape at that time as they would be if endorsed over to some one else, they were accordingly endorsed to the order of Lettie McIntire, and the deed of trust reciting said facts was prepared and executed on the 12th day of December, 1872, and recorded December 19th, 1872, in Liber 705, folio 73, &c., of the land records of the District of Columbia.

That Lettie McIntire never had any interest in said notes. The sale of the notes had not been made when the deed of trust was prepared, and her name was used on said notes in accordance with the usual custom among brokers.

That the attention of said Edwin A. McIntire has within the past three days been called to said additional deed of trust on the R Street property by the attorneys for the complainants, who now desire to offer a copy thereof in evidence.

That said John Southey, when cross-examined as a witness in said cause, testified on page 20 as follows:

Q. Did you give Mr. McIntire a deed of trust on the R Street and the I Street properties for $2,200, dated December 12, 1872, to secure the Streb notes?

A. I gave him a deed of trust on the R Street property to secure the payment of the Streb notes.

Q. That was dated December 12, 1872?

A. Yes, sir; when I sold the notes to Mr. McIntire.

Q. That was to further secure the notes?

A. Yes, sir; they were already secured by deed of trust from Streb on the I Street property.

* * * * * * *

Q. When did you sell to Mr. McIntire the Streb notes?

A. I sold them two or three days after they were made.

That on page 101 of the testimony taken in said cause the said Edwin A. McIntire was also, on cross-examination, interrogated and answered as follows:

Q. These are three (Exhibits A. H. Nos. 4, 5, & 6 in this case) of the notes I understand you to say were a part of the 8 notes which you say you negotiated with Southey?

A. They are.

Q. To whom did you negotiate those notes?

A. I think the first one was to Thomas Lewis, of the War Department; the second one was to M. P. King, possibly to Mr. Wilkins, of the War Department, and the others were to Henry and David McIntire.

Q. Southey endorsed them, did he not, when he delivered them to you?

923 A. Certainly; the notes were not complete until he endorsed them.

Q. To whose order did he endorse those notes?

A. I have forgotten. The notes themselves will show; the deed of trust will show, if they do not. I have forgotten now. But it was some one whom I could use for that purpose before I could transfer them.

Q. The notes are payable to the order of John Southey, are they not?

A. They are.

Q. Now, he endorsed them "pay to the order" of somebody, and that is stricken out. Who is that somebody?

A. It may be some member of my family.

Q. Do you know what member of your family?

A. I do not remember. I could not tell except by the deed of trust.

That the deed of trust referred to in said testimony was the deed of trust to which this deponent's attention has recently been called, and the attorneys who claim to represent the complainants desire now, after all the testimony has been read in the cause, to introduce in evidence a copy of said deed of trust with a view to impeach the testimony of deponent.

That after the lapse of twenty years and without having his mind called to the subject during that time this deponent answered truthfully that he had forgotten to whom John Southey endorsed said notes; that it might have been to some member of his (deponent's) family, and that he believed the deed of trust would show.

EDWIN A. McINTIRE.

Subscribed and sworn to before this 29th day of May, A. D. 1894.

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

Endorsed: Let this be filed in this cause. May 29, '94. A. B. Hagner.

Memorandums.

Original opinion of Justice A. B. Hagner filed Dec. 29, 1894. (See case of Pryor *vs.* McIntire *et al.*, No. 1276, equity.)

Motion for rehearing filed Dec. 31, 1894.

Petition for rehearing filed Jan. 7, 1895.

" " " allowed on subject of laches Jan. 8, 1895.

924 *Decree Dismissing Bill—Appeal.*

Filed Mar. 4, 1895.

In the Supreme Court of the District of Columbia.

CATHERINE SOUTHEY *et al.*
vs.
EDWIN A. MCINTIRE *et al.* } Equity. No. 13034.

This cause came on to be heard upon the bill, answers, exhibits, testimony, and all other the proceedings, *and*, being submitted to the court after argument of counsel for the respective parties and after reargument of the same, were by the court read and considered.

It is thereupon this 4th day of March, 1895, by the court and the authority thereof adjudged, ordered, and decreed that the said bill be, and the same is hereby, dismissed with costs, for which execution shall issue as at law.

A. B. HAGNER,
Associate Justice.

From the above decree the complainants take an appeal in open court, which is allowed.

March 4th, 1895.

A. B. HAGNER.

Memorandums.

Opinion of Justice A. B. Hagner on rehearing filed Mar. 4, 1895. (See case of Pryor *vs.* McIntire *et al.*, equity, No. 12761.)

Appeal bond filed Mar. 5, 1895.

* * * * * * *

In the Supreme Court of the District of Columbia.

CATHERINE SOUTHEY, MARGARET COLE, & MICHAEL COHAN
vs.
EDWIN A. MCINTIRE, MARTHA MCINTIRE. } No. 13034. In Equity.

The President of the United States to Edwin A. McIntire, Martha McIntire, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 4th day of March, 1895, wherein Catherine Southey, Margaret Cole, & Michael Cohan are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

925 Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 8 day of March, 1895.

S. S. HENKLE,
Attorney for Appellees.

* * * * * * *

In the Court of Appeals of the District of Columbia, May 15, 1895.

JOHN SOUTHEY *et al.*, Appellants,
vs.
E. A. MCINTIRE *et al.*, Appellees. } No. 468.

S. S. Henkle, sol. for appellees:

Take notice that the appellant hereby designates the following portions of the transcript of the record in the above case to be printed as necessary to the hearing of the same, to wit:

All of the transcript except so much thereof as is included in red-pencil brackets in said transcript.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
WM. W. BOARMAN,
Sol's for App'l'ts.

(Endorsed:) Court of Appeals, D. C., April term, 1895. No. 468. Catherine Southey *et al.*, appellants, *vs.* Edwin A. McIntire. Designation by appellants of parts of record to be printed. Court of Appeals, District of Columbia. Filed May 15, 1895. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 468. Catherine Southey, Margaret Cole, & Michael Cohan, appellants, *vs.* Edwin McIntire, Martha McIntire. Court of Appeals, District of Columbia. Filed May 14, 1895. Robert Willett, clerk.

926 In the Court of Appeals of the District of Columbia.

LAURA HAYNE & JOSEPH E. HAYNE, Appellants,
vs.
EDWIN A. MCINTIRE. } No. 469.

Supreme Court of the District of Columbia.

LAURA HAYNE, JOSEPH E. HAYNE, Compl'ts,
vs.
EDWIN A. MCINTIRE, Defendant. } In Equity. No. 13177.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Original Bill. Filed May 12, 1891.

In the Supreme Court of the District of Columbia.

LAURA HAYNE and JOSEPH E. HAYNE, Her Husband,
vs.
EDWIN A. MCINTIRE. } Equity. No. 13177, Docket 32.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant- states as follows:

1. The complainants are residents of the State of South Carolina; the defendant is a resident of the District of Columbia.

2. The complainant Laura Hayne sues in her own right and the complainant Joseph E. Hayne sues in right of his wife; the defendant is sued in his own right and also as trustee.

3. That on the 7th day of September, A. D. 1881, the complainant Laura, who was then residing and has ever since resided with her husband in the State of South Carolina, being seized in her own right of the east thirteen (13) feet of lot thirty-one (31), in square three hundred and eighty-eight (388), of the city of Washington, in said District, executed, jointly with her said husband, to the defendant a certain deed of trust, conveying the said real estate to
927 secure the joint promissory note of herself and her husband, dated the 7 day of September, and executed to William T. Galliher for the sum of $650, and payable in three (3) years from the date thereof, with interest at the rate of six (6) per cent. per annum, payable quarterly. The said deed of trust is recoaded in Liber 985, folio 89, of the land records of the District of Columbia, and is prayed to be taken as part hereof.

4. That before and after the execution of said trust the defendant

was the agent of the said Laura to collect the rents of said real estate and on the execution of said trust was instructed to apply the same to the payment of the interest and principal of said note; and the said defendant accordingly collected the said rents, but how much of said rents he so applied this complainant is uninformed.

5. That on the 28th day of August, 1882, the complainants still being in South Carolina, the said McIntire pretended to make sale of said property under and by virtue of said deed of trust and on the same day executed a deed purporting to convey the same to an alleged Emma Taylor for the sum of $500. The said deed is recorded in Liber 1043, folio 3, of said land records, and is prayed to be taken as part hereof.

6. That on the 16th day of May, 1883, there was filed of record in Liber 1043, folio 5, of said land records, an alleged deed, dated May 14th, 1883, from said alleged Emma Taylor to one Alfred Brown, purporting to convey said real estate to said Brown for the sum of eleven hundred dollars ($1,100.00), two hundred dollars of which was paid in cash and nine hundred dollars by the twelve promissory notes of said Brown, dated May 14th, 1883, for $75 each, payable respectively in 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, and 36 months from the date of said notes, the said notes being secured by a deed of trust upon said real estate, bearing even date with said notes, and recorded in Liber 1043, folio 6, of said land records, and is prayed to be taken as part hereof. The complainant is informed and believes that the said notes have all been paid to the said Edwin A. McIntire.

7. That the complainants have only recently discovered that the said pretended sale and deed to said alleged Emma Taylor was a fraud perpetrated by said McIntire upon complainants, who, being absent from the city of Washington, had no means of heretofore discovering said fraud. More particularly detailing said fraud, complainants state that there is not now and never was such a person as Emma Taylor, described in said deed of McIntire to Taylor and of Taylor to Alfred Brown; that the name "Emma Taylor" was an invention of said McIntire for the purpose of having it appear as if a valid sale and conveyance of the said real estate had been made under said alleged foreclosure sale, while, in fact, the real beneficiary of said alleged conveyances was the defendant himself. The complainants charge that the purchase-money paid by said Alfred Brown was received and appropriated by said McIntire to his own use in fraud of complainants.

8. That complainants are advised that the said defendant,
928 McIntire, should be held as a trustee for complainants in his dealings with said real estate, and that he should be required to account to complainants for the rents and profits received by him from said property as well as all moneys paid to him by said Brown as the purchase-money of said property.

Wherefore complainants pray—

1. That the defendant be required to appear and answer the exigency of the bill, but without oath, the complainants hereby ex-

pressly waiving such oath, and also that he be required to answer fully and particularly the following interrogatories, but without oath, the complainants hereby expressly waiving such oath:

Int. 1. Who is the Emma Taylor described in the deed from you to her and from her to Alfred Brown, as mentioned in the bill?

Int. 2. Was she ever in the District of Columbia to your knowledge? And, if so, give the dates of such times and state how long she remained here.

Int. 3. At what house or hotel did she live while here? Give street and number.

Int. 4. Did she ever reside in Philadelphia? And, if so, give street and number and date of her residence there.

Int. 5. Where is she now and when was the last time you ever heard of her and from whom?

Int. 6. Do you know of any person in the city of Philadelphia outside of your immediate family who ever knew her or ever conversed with her or ever saw her to know her? If so, give their names and addresses.

Int. 7. Have you any letters or receipts written by her or signed by her? If so, will you file with the answer to this bill any of such letters with the postmarked envelope, and also any of such receipts, as evidence of what you claim to be her handwriting?

Int. 8. Did you ever remit to her or pay directly to her any money by check or otherwise; and, if so, will you please produce and file with your answer any receipts of hers which you may have therefor or the check or checks with her indorsement thereon, so that the same may be taken as evidence of what you claim to be her handwriting?

Int. 9. How did you pay to said Emma Taylor the $1,100 received by you from Alfred Brown; was it paid by you directly to her or by checks, and did you receive from her any receipts therefor? If so, please file the same with your answer.

Int. 10. How was the $500 purchase-money mentioned in the deed from you to Emma Taylor paid to you and what did you do with it?

Int. 11. Have you, as far as you can, answered fully and in detail the foregoing interrogatories?

Int. 12. Are there any other facts which you have within your knowledge, information, or belief which will tend to disprove the charge made in the bill that the said Emma Taylor is a myth and a fiction? If so, state fully and in detail what said facts are.

2. That the said defendant, McIntire, be required to account
929 to the complainants for all rents and profits received by him or any person for him from or on account of said real estate, and particularly all the moneys received by him from Alfred Brown.

3. That for the purpose of taking said account a reference be had to the auditor of this court.

4. That complainants may have such other and further relief as the necessities of the case may require and to the court may seem just and proper.

To which end complainants pray for process against said E. A. McIntire, the defendant to this bill.

LAURA L. HAYNE.
J. E. HAYNE.

FRANKLIN H. MACKEY &
WM. W. BOARMAN,
Sol's for Compl's.

We, Laura Hayne and Joseph E. Hayne, being duly sworn, say that we have read the foregoing bill by us subscribed and know the contents thereof; that the facts therein stated upon information and belief we believe to be true, and those therein stated upon our personal knowledge we know to be true.

LAURA L. HAYNE.
J. E. HAYNE.

Subscribed and sworn to before me this 9th day of May, A. D. 1891.

THOS. A. SAXON,
Notary Public. [L. S.]

Answer to Bill. Filed July 7, 1891.

In the Supreme Court of the District of Columbia.

LAURA HAYNE and JOSEPH E. HAYNE *vs.* EDWIN A. MCINTIRE. } Equity. No. 13177, Doc. 32.

Answer of Edwin A. McIntire to the bill filed in the above-entitled cause.

1, 2. I never met the complainants and do not know of their place of residence or their relationship, hence I deny all the allegations as to said complainants in the 1st & 2d paragraphs of the bill.

3. I have no knowledge of the residence of the complainants or of their title to the property named. I deny that there was conveyed to me the east 13 feet of lot 31, square 388, as alleged. There was a deed of trust, however, made to me as trustee of the northeast one-quarter part of lot 31, in square 388, to secure $650, at ten per cent. interest.

4. I deny that I ever was the agent of Laura Hayne or
930 ever collected rents for her, or that I ever received any instructions from her as alleged, or that I ever received any letter or instructions or suggestions of any nature from her.

5. I deny that I ever sold the property described in the bill, but I did sell the property above described in my answer and sold it to Emma Taylor, who was the highest bidder at the sale which I made by virtue of the above-mentioned deed of trust.

6. I have no knowledge of Emma Taylor selling the property named in the bill; she did, however, sell the property I have above described in my answer and sold it to one Alfred Brown on instal-

ments. Some of the notes representing the deferred payments were collected through my office. I deny that they were paid to me as alleged. I have no knowledge of the record and date of the deeds as stated in the bill, hence I deny them.

7. I deny all the allegations in the 7th paragraph of the bill.

8. I deny that as a trustee or in any capacity I acted towards these complainants or either of them at any time in any way except in a strictly just and upright manner. I was directed to sell the property. I sold because of the failure of Joseph E. Hayne to pay interest and taxes, and before I sold the property I wrote him several times, but he replied that he could not pay. After the sale I wrote him again, and he replied, under date of October 11, 1882, asking if he would be allowed time to redeem his property, and to that inquiry I was directed to reply and did reply that the purchaser would give him 5 months in which to redeem, but I never afterwards heard from him. In all my transactions in connection with the above-described property, I consulted with and obtained the sanction of a Mr. Black, who held a power of attorney from Mr. Hayne and who represented him in all matters, and since the filing of the bill in this cause the said attorney has volunteered the information that he was perfectly well satisfied that in all my dealings with the property above described I acted in a fair and honest manner and with considerable more lieu-ency than is usually shown.

Answers to Interrogatories.

This defendant, denying the right of the complainants to propound the interrogatories attached to the bill and not waiving his right of objecting thereto, answers as follows:

1. Emma Taylor was a lady whom I first met some 10 or 12 yrs. ago, when she was introduced by a Mr. Cathcart Taylor, of Philadelphia, Pa., who had himself been introduced to me by Fred'k W. Jones, of this city, and both Emma Taylor and Cathcart Taylor were believed by me to be related to a Mr. Taylor who at one time had a flour mill or had a large interest in one in Georgetown, D. C.

2. Emma Taylor was in Washington from time to time, possibly nearly all the time, between about 1880 & 1885, but I cannot give dates by days and months.

3. I believe she boarded for a while at "Evans'," on F street between 9th & 10th, and for a while at the "Le Droit," on F St. between 8th & 9th streets.

931 4. She claimed to be a Philadelphian and had evidently lived there, for she knew the streets and different localities. I wrote to her once about 10 years ago; her address was then on Summer street not far from Logan square, but I cannot at this date recall the number of the house.

5. I do not positively know her present address. When I last heard of her it was about 3 or 4 years ago, from one John Taylor, an employee in one of the departments of this city, who stated that she had married and gone west to Pittsburgh or Chicago. Several

years ago at the suggestion of Mr. Fred. W. Jones, who knew her, I wrote her, addressing her by her maiden name at Pittsburgh and at Chicago, but the letter was returned from Pittsburgh "Not called for," and the one sent to Chicago was never heard from. Subsequently Mr. Fred. W. Jones offered to procure her proper address, but his sickness prevented him doing so.

6. Mr. Cathcart Taylor introduced Emma Taylor to me, but I do not know his address in Philadelphia. I know he was a Philadelphia- because he told me so, and also because at one time he presented me with a printed copy of an address he delivered before the alumni of the Philadela. Central high school. Miss Taylor was also known to Wm. H. Helmick, Joseph T. Coldwell, Frederick W. Jones, and Elmer E. Atkinson. Messrs. Helmick, Coldwell, & Jones are now deceased. Mr. Atkinson's address is not known, but he is an att'y practising before the Pension Office.

Deeds signed by Emma Taylor have been witnessed in Washington by H. Richey, Floyd Harleston, and S. A. Peugh, as well as by the officer taking the acknowledgment. Miss Taylor was known by a number of my relatives.

7. I have had several memorandums from her. I don't remember any letters. These memorandums, however, had nothing whatever to do with this suit or the property involved. They were of a confidential nature, and I should have to decline filing them if they were now in my hands.

8. I have had money transactions with her, but so many years have elapsed since then that I have forgotten if checks were used in payment or part payment. The deeds were the only receipts that would ordinarily be taken, and several of them are filed in this court.

I remember Miss Taylor collecting a draft at the Central Nat'l bank about 10 years ago, and I believe that she had an account in that bank or one of the down-town banks at a subsequent date.

9. Whatever amounts were paid me by Alfred Brown or paid in my office on his account were immediately turned over to Miss Taylor and the deed or note or notes for the amount or amounts were received and in turn handed over to said Brown. I deny that $1,100 was received by me.

10. The purchase-money was taken by Mr. Coldwell and paid by him to the holder of the note.

11. Yes.

12. Yes; I expect at the proper time to produce witnesses who will testify as to their knowledge of Emma Taylor. One of the wit-
932 nesses for the complainants, in another case instituted by the same solicitors who filed the bill in this case, truthfully acknowledged that he had met Emma Taylor in my office (see testimony of Mr. Forrest in the case of Mary C. Pryor, # 12761, equity). Further, I am informed and believe and so charge, in regard to this suit and the several suits also recently filed by the same solicitors (to wit, equity causes # 12761, 12977, 12978, 12979, 13034, and 13035), that not one of said suits was instituted at the instance of the complainants themselves, and not one of said complainants be

lieve the charges made in their several bills, but said charges are inventions of the said solicitors. The complainant named in one of said suits has admitted in testimony taken June 26, '91, before Examiner Harper, that she did not authorize said solicitors to institute a suit for her (see testimony of Elizabeth Brown in equity cause No. 12977).

From information received from my nephew on June 5, 1891, and from the contents of a letter quoted by Mrs. Galliher in her testimony before Examiner Harper March 17, '91, in said cause # 12761, and also from information received from other persons at other times, I believe and so charge that the solicitors who filed the bill in this cause and the bills in the other causes cited above have acted in connection with or at the suggestion of the solicitor who filed a bill of a similar nature (equity # 10745) and who I believe to be actuated with a desire to damage my reputation and the reputation of my family and prejudice the courts against us in our defense of the matters involved in the settlement of the estate of David McIntire, deceased, which has been in litigation for about seven years by said solicitor in the courts of this District, notwithstanding that the opinions of the courts have been uniformly rendered in our favor and against the clients of said solicitor. When said equity cause No. 10745 was filed it was charged, as in the bill in this cause, that Emma Taylor was a myth, although the complainant in that bill knew well to the contrary. The answer which I then filed suggested that, among other persons, Mr. Wm. Helmick, a justice of the peace at No. 916 F St. N. W., would know that the charge in said equity cause 10745 was false, and about that time, now nearly four years ago, the said Justice Helmick stated in the presence of S. S. Henkle (then, as now, my attorney) that he (Helmick) remembered Emma Taylor, and that he had taken her acknowledgment to several deeds, and that he would not have done so if he had not known her. About the same time Mr. Fred. W. Jones, then a member of this bar, also stated that he knew Emma Taylor, and had given me an address in Philadelphia that he thought would reach her.

If the testimony in said cause # 10745 had been filed in the usual way, so that that cause could have proceeded to trial within any reasonable time after the date of the last session before the examiner (now about 3½ years ago), the testimony of both Justice Helmick and Mr. Fred. W. Jones would have been secured some months before their sudden deaths, and would, I believe, have conclusively disproved the allegation that Emma Taylor was a myth, and sufficiently refuted the other statements in said bill which, much
933 to my injury, were published in the newspapers at that time, said publications being also made, as my nephew informs me, at the suggestion of said solicitor.

EDWIN A. McINTIRE.

I do solemnly swear that I have read the answer by me subscribed, and also the answers to the interrogatories, and know the contents thereof, and the facts therein stated upon my personal knowledge

are true, and those stated upon information and belief I believe to be true.

EDWIN A. McINTIRE.

Subscribed and sworn to before me this 7th of July, 1891.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

* * * * * * *

Motion for Leave to Amend Bill.

Filed July 24, 1891.

* * * * * * *

Order Granting Leave to Amend.

Filed July 24, 1891.

* * * * * * *

Amendment of Bill.

Filed July 24, 1891.

* * * * * * *

The complainants, by leave of court first had and obtained, hereby amend their bill by inserting in the 6th line in the 7th paragraph thereof, after the word "state" and before the word "that," the following words:

"That there was no public sale or auction of said property made by said defendant."

FRANKLIN H. MACKEY,
WM. W. BOARMAN,
Sol's for Compl'ts.

Answer to Amendment, &c.

Filed Sep. 4, 1891.

In the Supreme Court of the District of Columbia.

LAURA HAYNE & JOS. E. HAYNE
vs.
EDWIN A. McINTIRE.
} Equity. No. 13177, Docket 32.

Answer of defendant to the amendment to the bill in the above-entitled cause.

I deny the allegation made in the amendment to the bill. There was a sale on Monday, August 28, 1882, in due form, under the deed of trust of September 7, 1881, recorded in Liber 985, folio 89.

934 The complainant Laura Hayne I never saw and never had any correspondence with her, but the complainant Joseph E. Hayne was repeatedly advised by me that I had been directed in writing by the holder of the note to make such a sale, and I notified him when the sale would take place. On June 23, 1882, in reply

to such a notification, he wrote me from Beaufort, South Carolina, asking "how much would the place bring if sold, or what would come to us, outside the mortgage," and on October 11, 1882, he wrote me from Marion, South Carolina, saying, "I am informed by my wife's mother, Mrs. Mary Bowen, that the house has been sold. I hold in my hand today part of the money to pay on it. Can I redeem it, and for how much? Answer by return mail."

To that I replied Oct. 17, '82, that I had been to see the lady who purchased it, and "she is willing that you redeem it, provided you do so this month, as she expects to leave Washington on or about November 1st. I wrote you some time before the sale, urging you to forward the interest, and the sale was delayed a long time to give you an opportunity to respond. What amount of cash can you pay?" Again, I wrote him November 1, 1882, telling him that I had been instructed to say that he could have five months longer in which to redeem, but in response to my letters he never forwarded any cash or made any effort, so far as I am aware, to pay any part of the interest or to redeem the property.

In all my transactions I obtained the advice and consent of Mr. Black, who had a power of attorney from Mr. Hayne, and I know he was satisfied that all my doings in this matter were business-like, liberal, and honorable.

Further answering said amendment, I am informed and believe and so charge that the complainants knew nothing of the filing of this amended bill.

EDWIN A. McINTIRE.

I do solemnly swear that — have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

EDWIN A. McINTIRE.

Sworn to before me Sept. 4, 1891.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clk.*

* * * * * * *

Interrogatories. Filed Oct. 27, 1891.

* * * * * * *

Interrogatories to be propounded in behalf of the plaintiffs to Laura Hayne, one of the plaintiffs in this cause.

1. State your name, age, and residence.
2. Are you married; and, if so, to whom, and when were you married?

935 3. What was your father's name?

4. How did you become owner of the property described in the bill of the northeast one-quarter part of lot 31, in square 388, in the city of Washington?

5. Have you ever authorized the defendant, Edwin A. McIntire,

of Washington, or any one else to sell the said property to an alleged Emma Taylor or to one Alfred Brown?

6. When did you first learn that there had been no public sale of said property by said McIntire under the deed of trust executed by you to him to secure $650, and when did you first learn of the other facts alleged in the bill in which the said McIntire is charged with having defrauded you of your property?

7. Where were you residing in 1881 and since that time up to the beginning of your suit against said McIntire?

8. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Cross-interrogatories.

Nov. 4, 1891.

In the Supreme Court of the District of Columbia.

LAURA HAYNE and JOSEPH E. HAYNE *vs.* EDWIN A. MCINTIRE. } In Equity. No. 13177.

Cross-interrogatories of the defendant, Edwin A. McIntire, to be propounded to the plaintiff Laura Hayne in the above cause.

1. Did you ever have a personal interview with the defendant, Edwin A. McIntire? If so, state time, place, and subject of such interview.

2. Did you ever write to or hold any correspondence with the defendant, Edwin A. McIntire? If so, state when, where, and the subject of the correspondence.

3. Did you ever receive any letter or communication in writing from the defendant, Edwin A. McIntire? If so, please produce it.

4. Did you join with your husband July 16, 1877, in a deed of trust on your property in square 388, Washington, D. C., to L. J. O'Neal and Oliver C. Black, trustees?

a. If yea, who negotiated the loan?

b. Did you hold any correspondence with any one on the subject of that loan?

If yes, produce the letters.

5. Did you join with your husband May 14th, 1879, in a deed of trust on your property in square 388, Washington, D. C., to Edwin A. McIntire, trustee?

a. If yes, who negotiated that loan?

936 *b.* Did you hold any correspondence with any one on the subject of that loan?

If yes, produce the letters.

6. Did you join with your husband April 11th, 1881, in a deed of trust on your property in square 388, Washington, D. C., to Edwin A. McIntire, trustee?

a. If yes, who negotiated that loan?

b. Did you hold any correspondence with any one on the subject of that loan?

If yes, produce the letters.

7. Did you join with your husband September 7th, 1881, in a deed of trust on your property in square 388, Washington, D. C., to Edwin A. McIntire, trustee?

a. If yes, who negotiated that loan?

b. Did you hold any correspondence with any one on the subject of that loan?

If yes, produce the letters.

8. Did you at any time prior to the sale of your property in square 388, Washington, D. C., under the deed of trust of September 7, 1881, join with your husband in making a power of attorney to Oliver C. Black, empowering him to represent you in any transaction in regard to the property in question?

If yes, did you hold any correspondence with said Black or with any other person on the subject of that power of attorney?

If so, produce the letters.

9. Is it not a fact that your husband or Oliver C. Black, or both of them, have uniformly made all the negotiations with Edwin A. McIntire and others in regard to the trusts upon your property in square 388, Washington, D. C.?

10. If in answer to the first portion of plaintiffs' interrogatory No. 6 you say that you have learned that there had been no public sale by Edwin A. McIntire as trustee under the deed of trust, state from whom you obtained that knowledge and what was said or written to you that induced you to form such an opinion. If the knowledge was received through correspondence, please produce the correspondence.

11. If in answer to the second portion of plaintiffs' interrogatory No. 6 you say that you learned other facts as alleged in your bill, state from whom you learned them and what was said or written to you to induce you to form such an opinion.

If the knowledge was received through correspondence, please produce the correspondence.

12. When were you last in Washington, D. C.?

13. When was your husband last in Washington, D. C.?

14. How often have you or your husband been in Washington, D. C., since August 28th, 1882?

15. What relatives had you in Washington, D. C., on August 28, 1882, and did any of them write to you of the sale of your lot in square 388?

16. Did you correspond with any one in Washington, D. C., during the last half of the year 1882? If so, with whom, and did they not advise you of the sale of your property in square 388?

937

17. Do you not know that your husband has repeatedly written to E. A. McIntire on the subject of the incumbrances on your property in square 388?

18. Do you not know your husband wrote to E. A. McIntire Sep-

tember 23, 1881, expressing thanks for favors rendered in connection with loans on your property in square 388?

And on June 23, 1882, in reply to E. A. McIntire's letter telling him that the property would have to be sold, asking "How much will the place bring if sold, or what would come to us outside the mortgages?"

And on August 28, 1882, acknowledging receipt of E. A. McIntire's card advising him that the place is advertised under the deed of trust?

And on October 11, 1882, saying that his wife's mother, Mrs. Mary Bowen, had informed him that the house had been sold?

19. Do you not know that your husband wrote to Oliver C. Black in the summer of 1882 asking him to see if he could not have the sale delayed?

And afterwards, in the same year, telling him the sale had been made and asking said Black if he would not redeem the property?

20. Do you not know that your husband wrote to Mr. Moxley, of Washington, D. C., in the summer of 1882, stating that the property had been advertised for sale under the deed of trust and asking him if he, Moxley, could assist him?

And afterwards, in the same year, telling him the sale had been made and asking said Moxley if he would redeem the property?

21. Who suggested to you to file your bill in this cause and what was said or written to you on the subject?

Please produce the letters.

22. Has any letter or communication in writing or any verbal message been received by you suggesting any answer or answers or intimating how you might or could answer any of the interrogatories propounded to you?

23. Have you answered the above cross-interrogatories as fully and as much in detail as you are able and without reserving any material fact?

S. S. HENKLE,
Sol. for Def't.

Answer to Interrogatories.

* * * * * * *

Testimony of Laura Hayne, a witness examined on behalf of the plaintiffs by the undersigned commissioner, at Columbia, South Carolina, Nov. 17th, 1891.

In answer to 1st interrogatory. My name is Laura Hayne; I am forty-four years of age; I live at the Allen University, Columbia, S. C.

938 In answer to 2nd Int. I was married Oct. 28th, 1874, to Joseph E. Hayne.

In answer to 3rd Int. Antony Bowen.

In answer to 4th Int. I inherited the lot mentioned from my father.

In answer to 5th Int. I have not.

In answer to 6th Int. I have never heard of any public sale of

this lot. I first heard of the facts on which I have charged Mr. McIntire with defrauding me of my property from the newspapers about the 1st March, 1891.

In answer to 7th Int. I was living in Beaufort, S. C., in 1881. I moved from there to Marion, S. C., in 1884, and lived there about one year. I then moved to Charleston, S. C., and lived there until I came to Columbia in Jan., 1891, where I have since lived.

In answer to 8th Int. I paid $480.00 to Mr. McIntire on the amount borrowed. He rented the property and took the rents also. I wrote to Mr. McIntire about the property from Beaufort, Marion, and Charleston, but got no answer from him. I saw in the papers about his defrauding others and told my husband to write to Mr. Mackey to get him to look after this property.

Answers to Cross-interrogatories.

In answer to 1st cross-interrogatory. I never had any personal interview with him at all.

In answer to 2nd cross-int. I wrote to him at Washington from Beaufort about 1882 and from Marion about 1885, asking him about the condition of the property.

In answer to 3rd cross-int. I received one or two letters and cards containing receipts for money, but I have none of them with me now.

In answer to 4th cross-int. Yes. 2. The defendant, Edwin A. McIntire, negotiated the loan. 3. I had some correspondence with Oliver C. Black while we were arranging the matter, but I have none of the letters with me now.

In answer to 5th cross-int. 1. Yes. 2. The defendant, Edwin A. McIntire, negotiated the loan. 3. I had some correspondence either with Mr. McIntire or with Mr. Black, his agent, but I have none of the letters with me.

In answer to 6th cross-int. 1. Yes. 2. Mr. McIntire negotiated that loan. 3. I had some correspondence with Mr. McIntire or with Mr. Black, his agent, but have none of the letters with me.

In answer to 7th cross-int. I don't remember but two deeds of trust to Edwin A. McIntire, trustee. Those two are the ones that I have already spoken of.

In answer to 8th cross-int. I don't remember signing any power of attorney to Mr. Black.

In answer to 9th cross-int. All of the negotiations were made, so far as I know, directly with Mr. McIntire either by myself or by my husband. Mr. Black had no money to loan that I knew of. He was only a clerk in Mr. McIntire's office.

939 In answer to 10th cross-int. I formed my opinion from what I saw in the newspapers about other cases like mine, and I then got my husband to look into it. He told me that I had better employ a lawyer to see what could be done for me, and we employed Mr. Mackey. I have never been written to about it. My husband has written several times about it.

In answer to 11th cross-int. As I said in my last answer, I learned

all the facts about Mr. McIntire's conduct that I have through my husband; nothing has been written to me about it. My husband told me that he didn't think Mr. McIntire was treating me right and that I had better employ a lawyer to look into it. My husband has managed the affair for me and nothing has ever been written to me about it.

In answer to 12th cross-int. In November, 1883.

In answer to 13th cross-int. In 1889.

In answer to 14th cross-int. Neither I nor my husband have been in Washington but once since Aug. 28, 1882.

In answer to 15th cross-int. At that time I had a mother and two married sisters living there. None of them wrote to me of the sale of this lot.

In answer to 16th cross-int. I had no correspondence with any one in Washington during the last half of the year 1882.

In answer to 17th cross-int. When my husband made the payments he would write to him and send the money, but I don't know of any other correspondence.

In answer to 18th cross-int. I remember the letter of Sept. 23, 1881, but don't remember any of the others.

In answer to 19th cross-int. I do not know anything of these letters.

In answer to 20th cross-int. I do not know anything of these letters.

In answer to 21st cross-int. My husband was managing the matter for me and he told me he would employ a lawyer and see what he could do. He told me afterwards that he had employed Mr. Mackey. Nothing was written to me on the subject and no one spoke to me except my husband.

In answer to 22nd cross-int. I have received no written communication as to how I should answer these questions, and no one has made any verbal suggestion to me. I have talked over the facts with my husband before this in trying to remember all of them as they happened.

In answer to 23rd cross-int. Yes.

LAURA HAYNE.

SOUTH CAROLINA, }
Richland County, }

I, Cowper Patton, commissioner, do hereby certify that by virtue of the writ of commission to me directed, hereto annexed, I have this day caused the within-named Laura Hayne to appear before me, and that she, having been first duly sworn, made the answers above written to the interrogatories and cross-interrogatories
940 as indicated, the same having been propounded to her by me as herein directed; and, further, that, having heard the said interrogatories and cross-interrogatories and her answers thereto read, she placed her signature to the same as herein indicated.

In testimony whereof I have hereunto set my hand and *and* affixed my seal this 17th day of November, A. D. 1891.

COWPER PATTON, [SEAL.]
Commissioner.

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SEPTEMBER 21, 1891.

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LUCINDA FREEMAN, who, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says:

Direct examination.

By Mr. MACKEY:

Q. Do you know Edwin A. McIntire?
A. Yes, sir.
Q. Did you rent a house from him; and, if so, when?
A. Yes, sir; on E between 9th and 10th streets southwest, in this city, but I do not remember the number of it. I went there about eleven years ago.
Q. How do you fix that date?
A. I have a little girl who will be twelve years old the 26th of next March, and she was, I guess, about a year old when I went into that house; I stayed in that house about five years, and maybe a month or two over.
Q. While you were there was there any public sale of that property?
A. No, sir.
Q. Did you see any red flag or hear any bell-ringing?
A. No, sir; not at my door while I was there.
Q. If there had been a sale of that house, would you have known of it?
A. I should think so.
Q. That is the same house in which Alfred Brown lives now?
A. Yes, sir.

Cross-examination.

By Mr. HENKLE:

Q. You rented that house from Mr. McIntire?
A. Yes, sir.
Q. Did you sign a lease when you went in there?
A. I signed an agreement.
Q. Did you write your name?
A. No, sir; I made my mark.
941 Q. Did anybody witness it?
A. Nobody was with me when I rented the house.
Q. Where was it you made the agreement?
A. On the avenue between 9th and 10th streets.
Q. At Mr. McIntire's office?
A. Yes, sir.
Q. Do you know who wrote the agreement?
A. I do not know, but one of the clerks wrote it, I think. Mr. McIntire did not write it, I do not think.
Q. Did he sign it as a witness?

A. I do not know about that. He wrote the agreement, and he wrote my name to it, and I made my mark.
Q. Would you know the paper if you were to see it?
A. I do not know that I would, but I might.
Q. Will you look at that paper and see if that is it?
A. It looks like it.
Q. You rented it by the month, did you not?
A. Yes, sir.
Q. How much were you to pay for it?
A. Nine dollars a month.
Q. You do not know the name of the clerk who wrote the paper?
A. No, sir.
Q. Was Mr. McIntire present when you signed the paper?
A. I do not think he was.
Q. Was his name Harlston?
A. I could not tell you.

WITNESS: I made a mistake about Mr. McIntire's office. It was on F street. I thought of another house which I rented when I spoke of his office being on Pennsylvania avenue between 9th and 10th streets.

Q. Were you living in that house at the time you rented it?
A. No, sir.
Q. You did not move into it until after you rented it?
A. No, sir.
Q. And you lived there for five years afterwards?
A. Yes, sir; and a month, I know, and it may be two months.

Mr. MACKEY: Solicitors for the complainant call for the paper for the purpose of examining the witness in redirect examination in response to the interrogatories put to her by the defendant's counsel.

Mr. Henkle, defendant's counsel, says that he has not yet offered it in evidence and requests the examiner to mark it for identification.

(NOTE.—And said paper is marked for identification "L. F. No. 1.")

LUCINDA x FREEMAN.

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942 *Emily S. Moxley.*

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Direct examination.

By Mr. MACKEY:

Q. Where do you reside?
A. No. 920 E street southwest, in this city.
Q. Do you know Laura Haynes?
A. Yes, sir.
Q. What relation, if any, are you to her?
A. She is my sister.

Q. Who was your father?
A. Anthony Bowen.
Q. He was your father and her father?
A. Yes, sir.
Q. He is dead?
A. Yes, sir.
Q. Do you know Alfred Brown?
A. Yes, sir.
Q. Where does he live now?
A. No. 918 E street southwest, in this city.
Q. How far do you live from there?
A. The adjoining house, right next door.
Q. How long have you been living where you are now?
A. Twenty years.
Q. Do you remember any public sale of that property which Alfred Brown is living in now ever having taken place at any time?
A. No, sir; there never was any flag up there.
Q. In August, 1882?
A. No, sir.
Q. Never any flag or bell-ringing there?
A. No, sir.
Q. No public sale there?
A. No, sir.
Q. Nobody there offering the property for sale?
A. No, sir.
Q. If any sale of the property had taken place, would you have been likely to have known of it?
A. Yes, sir.
Q. Were you at home most of the time?
A. All the time.
Q. Do you know Lucinda Freeman?
A. Yes, sir.
Q. Did she ever live there where Alfred Brown lives now?
A. Yes, sir.
Q. Do you remember when she moved in there?
A. Yes, sir.
Q. Did she have a little girl baby at that time?
A. Yes, sir.
943 Q. About how old was that baby then?
A. About a year old; a little over a year old; it was a baby.

Cross-examination.

By Mr. HENKLE:

Q. How old were you when you went there to live?
A. I guess about twenty-four years.
Q. Were you married at that time?
A. Yes, sir.
Q. You have been living there ever since?
A. Yes, sir.

Q. Do you keep house?
A. Yes, sir.
Q. Have you been there all the time and never went out?
A. No, sir; I never go out of the house to stay all day.
Q. Never been away from home to stay all day in twenty years?
A. No, sir.
Q. Morning, noon, and night—all the time?
A. I am partly sick all the time, and I am at home and do not go out much. Of course, then I had a small family at that time, and it kept me at home.
Q. Did you have your eye on the street all the time?
A. Yes, sir.
Q. What part of the house did you work in?
A. Second room back.
Q. You had your eye on the street all the time?
A. Yes, sir; looking out of the kitchen front.
Q. Could a sale have taken place without your knowing?
A. No, sir.
Q. You can swear to that?
A. Yes, sir.
Q. Was there a sale of any other house in the neighborhood?
A. Yes, sir; there was a sale in the neighborhood, next door to me.
Q. When was that?
A. I do not know exactly how long it has been. I could not tell the date.
Q. About how long?
A. About twelve years ago.
Q. Who owned that property?
A. Mr. Beckett owned that property at the time of the sale.
Q. Was it sold at public auction?
A. Yes, sir; the bell rang and there was a red flag.
Q. Whose daughter did you say you were?
A. Anthony Bowen'-.
Q. What was your mother's name?
A. Mary Bowen.
Q. Where did your mother live in August, 1882?
A. No. 417, I think, 8th street southwest.
Q. Is she living now?
944 A. No, sir.
Q. When did she die?
A. Nine years ago.
Q. Did you ever hear your mother say anything about that property being sold?
A. No, sir; I never heard her say, because we did not know there was anything borrowed on it until my sister come up here to mother's funeral, and then she said there had been money borrowed.

Mr. MACKEY: I object to the witness being interrogated about a sale concerning which she was not asked on the direct examination.

Q. Did you know Mr. McIntire?

A. Yes, sir; he has been to my house.

Q. Was Mr. McIntire at your house in August, 1882?

A. I do not know, sir; but I know he has been there.

Q. Did you ever have any talk with him about this house we are talking about?

A. Yes, sir; Mr. McIntire has been there since 1882. He was there soon after the earthquake in South Carolina—I do not know the year—and he was there after that.

Q. Did he talk about the sale?

A. Yes, sir; he did not say anything about a sale of the property, but he said that he had been down there and that he had seen Haynes in South Carolina.

Q. Did you not tell him about the property — was sold; that Haynes would never pay anything on it?

A. I might have told him that. I do not say that I did not or did.

Mr. MACKEY: Objected to as *res inter alia.*

Q. Did not Mr. McIntire tell you how much the property had been sold for.

Mr. MACKEY: Objected to.

A. No, sir; I do not remember Mr. McIntire telling me how much the property had been sold for.

Q. Think a little about it. Did he not tell you how much it had sold for and did not you say that Haynes would never pay anything on it and would not pay his debts?

A. Mr. McIntire said how Haynes had borrowed on it.

Q. Were you not talking about the sale?

A. No, sir; not about the sale; only talking about the money that was borrowed.

Q. Did you not tell Mr. McIntire that Haynes would not pay anything on it?

A. I might have told him that. That was after Mr. McIntire had been down South.

945 Q. Do you know that your mother some time in the latter part of 1882 wrote to Mr. Haynes, telling him that the property had been sold?

Mr. MACKEY: Objected to as not responsive to the direct examination and altogether inadmissible.

A. No, sir; mother did not live with me, and I did not know what she wrote.

Q. You never had any conversation with her about it?

A. I might have talked with her about it, but I do not remember hearing about her writing about it or saying anything about it. I do not remember her telling me about it.

Q. You say she did not?

A. Not that I know of. She never said anything to me about writing to him about family matters.

Q. You were sick in bed?
A. Yes, sir.
Q. In what part of the house?
A. In the front room upstairs, which is my room.
Q. How long were you confined to your bed?
A. I do not know how long from rheumatism.
Q. You had several conversations with Mr. McIntire in regard to this matter of Haynes?
A. No, sir; I only spoke to Mr. McIntire one time, as I remember, and the other time was about our back alley which was not paid for.
Q. You were rather down on Haynes?
A. I do not know.
Q. You did not have much opinion of him?
A. No, sir; and I have not much now on account of letting the property go in that way when he could have kept it.
Q. You did not know it, then?
A. I knew that he borrowed the money on it, but how it went or whether he paid this money I did not know until Mr. Brown brought it.
Q. You knew that it had passed out of his hands into Brown's. How did you know that?
A. Alfred Brown said he bought it.
Q. How did he buy it?
A. Mr. McIntire was the agent for it. I supposed that he bought it from Mr. McIntire, but Mr. Brown did not tell me.

Mr. MACKEY: Solicitors for complainant object to this line of examination as *res inter alios acta.*

Q. Then you did not know that the property had got out of Haynes?
A. I did not know it.
Q. You understood that he did not own the property any more?
A. He borrowed this money and the next thing I knew Mr. Brown bought this property.
Q. Bought it on account of that debt?
A. Yes, sir; on account of the money borrowed.
946 Q. You knew that there had been a sale to pay that debt?
A. It must have been. Common sense tells me that.
Q. Do you know when Mr. Brown first claimed to own it?
A. No, sir.
Q. Or when Mr. Brown commenced collecting the rents?
A. I do not think Mr. Brown collected any rents.
Q. Did Mr. McIntire collect the rents for Mr. Brown?
A. Yes, sir.
Q. Do you know when Mr. Brown first claimed to own it?
A. No, sir,
Q. Some time in 1882, was it not?
A. I do not know.
Q. How long has Mr. Brown lived there?
A. Mr. Brown has been there now about four or five years.

Q. And he claimed to own it long before he went into it?

A. I heard that he was buying it. I do not know whether he finished paying for it or not.

Mr. MACKEY: Objected to.

Q. When did you first learn that he bought it; ten or eleven years ago?

A. I could not tell exactly. I do not know. I think it was while Mr. Brown was in there that I heard Mr. Brown was buying the place, but when he bought it or finished paying for it I do not know.

Q. You knew some eight or ten years ago, at all events, that Mr. Brown was buying it?

A. I guess so, if it has been that long that I heard he was buying it.

Q. When did you first know that there was a debt on it?

Mr. MACKEY: Objected to, as the witness has never said that she knew that there was a debt on it; she only said that she heard that there was a debt on it.

A. That is all I heard.

Q. When did you first hear that there was a debt on it?

A. About nine years ago this fall I heard there was a debt on it, and then my sister came on to the funeral of my mother; she went to see Mr. McIntire, but what passed between them I do not know, because I did not go with her. I heard that this money was borrowed, but I did not know until then that there was any money borrowed on the place, and she did not know it herself.

Q. Did she know that the property was sold at that time?

A. No, sir; she knew that this money was borrowed, but she did not know that the house was sold.

Q. Did you not say a little while ago that you had conversations with Mr. McIntire before your sister came up?

A. No, sir; I do not remember having any conversation with him until after the earthquake in South Carolina. He went down there and come and told me that he had been down there looking for Haynes, and that is the only conversation I had with Mr.
947 McIntire about the property. I had some business with him myself.

Q. That is the first time you knew there was a debt on it?

A. Well, my mother died before the earthquake.

Q. Then you heard from your sister before that?

A. Yes, sir; I heard that this money was borrowed, but she did not know it was so much and thought some had been paid.

Redirect.

By Mr. MACKEY:

Q. You have been asked a great many times if you did not know that Brown had bought this property. I want to ask you whether all this you have been testifying to is what you know of your own knowledge or what you heard from other people.

A. Well, I know that.

Q. You know that you had these conversations. Do you know that Mr. Brown bought the house?

A. No, sir.

Q. You only know it from hearsay?

A. Yes, sir; Mr. Brown never told me himself that he bought the house.

Q. If any public sale of that property had taken place and you had not seen it yourself would you have been likely to have heard of it from some of your neighbors living around there?

A. Yes, sir; and I never was so sick that I could not have heard the bell ring.

Q. If you had been away from the house at the time of the alleged sale when you came back you would have heard of it?

A. Yes, sir.

Q. Did you ever hear from anybody that this property was sold at public auction?

A. No, sir; I was never off that street to stay two or three days since I have been there, and I have been there forty-three years.

Q. Were there any houses on the opposite side of the street in 1882?

A. The brick row there now was not there then.

Q. Do you know how long that brick row has been there?

A. Two or three years.

Q. So that the only people living on that street were living on your side of the street?

A. There were two houses on the other side and a little frame house was down towards 10th street.

Q. But opposite where you live?

A. There were no houses right opposite but a little old shanty that set back in the commons there.

Mr. HENKLE: Objected to as not being redirect examination.

EMILY S. MOXLEY.

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948 *Mary Moxley.*

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Direct examination.

By Mr. MACKEY:

Q. You are a daughter of the preceding witness and live with her?

A. Yes, sir.

Q. How old are you now?

A. Seventeen years old.

Q. Have you been living with your mother ever since you were born?

A. Yes, sir.

Q. Do you remember living anywhere else than where you live now?

A. No, sir.

Q. You have lived in this house all the time?
A. Yes, sir; ever since I was born.
Q. Do you know where Alfred Brown lives?
A. Yes, sir; next door to me.
Q. Do you remember any auction sale ever taking place of that property within the past ten or twelve years?
A. No, sir.
Q. If any auction sale had taken place there, say, in 1882, which would be nine years ago, would you have known it?
A. Yes, sir.
Q. Did you ever hear from anybody of any auction sale having taken place there?
A. No, sir.
Q. Never heard any bell ringing or see a red flag put up there?
A. Not in front of that house.

Cross-examination.

By Mr. HENKLE:

Q. Did you go to school when you were a child?
A. Yes, sir.
Q. Where did you go to school?
A. Corner of 9th and E streets southwest.
Q. How far from this house?
A. Right on the corner, and this house is between 9th and 10th streets.
Q. What time in the morning did you go to school?
A. Nine o'clock, out from twelve to one, and out again at three o'clock.
Q. How old were you when you first began to go to school?
A. Five years old.

MARY D. MOXLEY.

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949 *Melinda Beckett.*

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Direct examination.

By Mr. MACKEY:

Q. Where do you live?
A. No. 922 E street southwest.
Q. Do you know Alfred Brown?
A. Yes, sir.
Q. How far do you live from him?
A. Just two doors.
Q. One house between yours and his?
A. Yes, sir; and that is Mrs. Moxley's house.
Q. How long have you been living where you are now?
A. About eleven years.

Q. Do you remember any public sale of this property that Brown lives in now ever taking place in August, 1882?

A. No, sir.

Q. If any sale of that sort had taken place, any bell ringing and a red flag put *put* there, and any crowd around there, would you have known of it?

A. Yes, sir; certainly.

Q. Did you ever hear from anybody that a public sale of that property had taken place?

A. No, sir; not at that house.

Q. You never heard any sale cried there?

A. No, sir.

Cross-examination.

By Mr. HENKLE:

Q. When did you first learn that this Brown house had been sold?

A. I never learned it until Mrs. Laura Haynes came up to her mother's funeral. After that I had heard they had lost their house.

Q. That it had been sold?

A. No, sir; I just heard that they had borrowed money on it and lost it.

Q. You heard that when she came to her mother's funeral?

A. Yes, sir; through Mrs. Moxley.

Q. Do you know what year that was?

A. No, sir; I know it was soon after the death of her mother, and it must have been in that year.

Q. How soon after that did you hear that Mr. Brown owned the house?

A. Well, I guess I heard it one or two months after Mrs. Freeman moved out.

Q. That Mr. Brown had bought the house?

A. No, sir; I heard that he was buying it.

950 Q. And that he was paying for it?

A. Yes, sir.

Q. Did you hear that he had bought it some time before?

A. No, sir.

Q. You heard when she came up that they lost the house on account of the debt?

A. Yes, sir.

Q. You are a married lady and were at that time—ten years ago—and had children which kept you busy?

A. Yes, sir.

Q. You were not on the street much, were you?

A. I was most always in the house and I always went to the door, but the children kept me busy.

Q. Were you away from home?

A. Not all day at any time within the eleven years.

Q. Been away part of the day?

A. Yes, sir.

Q. What part of the day have you been away?
A. I would be from home from nine to three, something like that, or from nine to four and hardly later than that.
Q. Pretty often?
A. No, sir; not very often.
Q. Were you ever sick and confined to your room?
A. Yes, sir; but for no length of time, not so that I had to be in bed all day.
Q. How long were you confined to your bed?
A. I could not tell exactly; I guess off and on about a week, but not so that I could not go to the window and look out and call the children.

Redirect.

By Mr. MACKEY:

Q. You never was so busy or sick that you could not have heard an auction bell ringing in front of your door?
A. I never heard any there.

her
MELINDA x BECKETT.
mark.

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Mary M. Bowen.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Where do you live?
A. No. 904 E street southwest.
Q. Do you know where Alfred Brown lives?
A. Yes, sir.
Q. How far do you live from him?
951 A. I live in the third house from the corner of 9th street.
Q. How many houses between your house and his?
A. I never counted them.
Q. Well, two or three?
A. More than that, I guess.
Q. Brown's house is No. 918 and yours is what?
A. No. 904.
Q. How long have you been living where you are now?
A. Fourteen years.
Q. Do you remember any auction sale of that property in which Alfred Brown lives taking place in August, 1882?
A. I do not remember seeing any sale there. I do not remember much about that year.
Q. Well, at any time do you remember any auction sale of that property having taken place eight or nine or ten years ago?
A. I never saw any sale.
Q. If any sale had taken place of that property—a red flag stuck

out there and a bell rung and the auctioneer crying off the property—would you have been apt to know it?

A. I would have if I had been home.

Q. Were you away from home much?

A. Well, not to stay a week or a month, but I would go away and stay all day sometimes.

Q. Did you ever hear from anybody that there had been a public sale of that property?

Mr. HENKLE: Objected to as hearsay.

A. No, sir.

Cross-examination.

By Mr. HENKLE:

Q. You were frequently away from home all day?

A. Sometimes I would be.

Q. You cannot say positively upon your oath that this property never was sold?

A. No, sir; I could not swear to that, but I never seen it.

Q. That is all you can say?

A. Yes, sir; and that I never heard any one say that it had been sold.

Q. There may have been a sale there for all you know?

A. Yes, sir.

MARY M. BOWEN.

* * * * * * *

Arthur R. Colburn.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Where do you live?

A. No. 2201 14th street northwest, in this city.

952 Q. You may state whether or not you have made an examination and at whose request of the files of the Washington Critic newspaper and of the Washington Evening Star newspaper for August 28th, 1882, and for eight or ten days prior to that time.

A. I made an examination at your request of the Evening Star and of the Critic for the time beginning Monday, August 21st, 1882, and ending Monday, August 28th, 1882, both inclusive.

Q. What were you looking for?

A. I was looking for an advertisement or notice of an auction sale by Edwin A. McIntire.

Q. Did you find any such sale advertised in either of those papers at or between those dates?

A. No, sir; I did not see any advertisement at all by Edwin A. McIntire.

Q. Did you make a careful search?

A. I made a careful search in all places where advertisements were likely to occur.

Q. In the list of auction sales?

A. Yes, sir.

Cross-examination.

By Mr. HENKLE:

Q. You are quite confident that there was no such advertisement?

A. I did not see any.

Q. Will you swear that there was not any?

A. I will not swear that there was not any, but I do swear that I looked and did not find any.

Q. You will swear that you examined every advertisement of auction sales within the time you speak of both in the Critic and Evening Star?

A. I am perfectly confident that within the time I speak of I examined all the advertisements of auction sales and did not find any by Edwin A. McIntire, and I do not think I escaped any advertisement.

ARTHUR R. COLBURN.

* * * * * * *

SEPTEMBER 21, 1891.

* * * * * * *

LUCINDA FREEMAN, who, being recalled, further deposes and says:

Direct examination.

By Mr. MACKEY:

Q. Where did you live before you moved into the house where you are now?

A. Cata-cornered across the street.

953 Q. How long did you live there before you went into the house where you now are?

A. Four years.

Q. During the time you were over there did you observe any auction sale of the house in which Alfred Brown lives?

A. No, sir.

Q. If any sale had taken place while you were living there, would you have known it?

A. Yes, sir; I think so.

Cross-examination.

By Mr. HENKLE:

Q. You say you lived across the way?

A. Yes, sir.

Q. Some of the witnesses testified that there were no houses opposite?

Mr. MACKEY: She said that she lived cata-cornered from there.

A. I said I lived cata-cornered from there. The house where Alfred Brown lives sets about midway of the block.

Q. Did you hear Mrs. Moxley testify?

A. Yes, sir.

Q. She testified that there were no houses opposite to you.

A. There were three houses from the corner of Wilkerson's house and two frame houses; there were two houses from 10th street and three houses from 9th street, and then there was a vacant space between these brick buildings that have been built there since. Right opposite Mr. Brown's house there were no houses at that time.

Q. You lived across the street at that time?

A. Yes, sir; cata-cornered. The front of my house was on 9th street, but I could see half way up the block and I could see easily the house that Mr. Brown lives in now.

Q. How came you to make this correction?

A. I told the gentleman that I had lived right across the way for four years, and he did not ask me any questions about that.

her
LUCINDA x FREEMAN.
mark.

* * * * * * *

(Adjourned.)

SEPTEMBER 29, 1891.

* * * * * * *

Alfred Brown.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Where do you live now?

A. At No. 918 E street southwest, in this city.

954 Q. Is that the piece of property you bought from or through Mr. McIntire?

A. Yes, sir.

Q. Did you not buy any other piece from him; did you?

A. No, sir.

Q. Did you ever see Emma Taylor?

A. No, sir; not to my knowledge.

Q. When you bought this property with whom did you transact the business?

A. Mr. Edwin A. McIntire.

Q. Did you ever see any lady in the transaction at all?

A. No, sir.

Q. Well, how much did you agree to pay Mr. McIntire for the property?

A. In the first place, I agreed to pay ten hundred dollars for the property.

Q. Did you give him any cash?

A. I paid him $220 cash.
Q. What was the twenty dollars for?
A. That was to get full control of the rents and insurance.
Q. Well, this deed (filed as Exhibit A. H. No. 12 with the evidence in equity cause No. 12761 of Pryor *vs.* McIntire) says $200. What was that $200 for?
A. That $200 was the first payment on the property, and I paid the other in notes to Mr. McIntire, with interest.
Q. You say that you paid him $220?
A. Yes, sir; all at the same time.
Q. Did you pay him anything for making the deeds?
A. Yes, sir; all that was paid as we went along.
Q. Was that part of the twenty dollars?
A. I could not answer positively as to that.
Q. That was all you paid him, $220, in cash?
A. Yes, sir.
Q. And the balance, you say, you gave him in notes?
A. Yes, sir.
Q. How much in notes did you give him?
A. $900 I paid him in notes.
Q. Well, how did it come that you agreed to pay him $1,000 at first and then give him $1,100, $200 in cash and $900 in notes?
A. Three months after I made the first payment when I went to him Mr. McIntire told me that through a close examination he found there was an outstanding debt for some improvements for sewer back in the alley that had been standing and never had been paid, and I paid that off, knowing that I would not want the property with these different bills standing against it.
Q. So that he made it one hundred dollars extra?
A. Yes, sir.
Q. Did you give him a deed of trust on the property to secure that $900?
A. Yes, sir.
955 Q. You gave him notes for $900, secured on the property by a deed of trust?
A. Yes, sir.
Q. Did you pay those notes?
A. Yes, sir.
Q. How much interest did you pay on the notes?
A. Ten per cent. interest.
Q. Did you pay your notes promptly as they fell due?
A. Yes, sir, except the last note, which ran over, I think, about twenty-five days, something like that, and I paid that note and the interest for that time.

Cross-examination.

By Mr. HENKLE:

Q. Are you sure you paid the money to Mr. McIntire or to one of his clerks?

A. To Mr. McIntire himself always.

ALBERT BROWN.

* * * * * * *

(Adjourned.)

OCTOBER 29, 1891.

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William T. Galliher.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Where do you reside, Mr. Galliher?

A. No. 469 H street southwest, in this city.

Q. You are the husband of Mrs. Annie Galliher, who has testified in these cases against Edwin A. McIntire and others?

A. Yes, sir.

Q. Mr. Galliher, did you ever invest any money through Mr. Edwin A. McIntire?

A. No, sir.

Q. Do you know Mr. Edwin A. McIntire?

A. Yes, sir.

Q. There is a deed of trust recorded in Liber 865, folio 89, of the land records of the District of Columbia and referred to in the bill in this case, which recites the execution of that trust to secure the joint promissory note of Laura Haynes and Joseph Haynes, her husband, dated the — day of ——, and executed to William T. Galliher for the sum of $650 and payable in three years from the date thereof, with interest at six per cent. per annum. Was ever such a note as that executed to you with your knowledge? And, if so, state what you know about it.

A. I never made any loans through Mr. Edwin A. McIntire, but when we were on friendly terms I went into his office. He
956 was an uncle to my wife, and by virtue of that relation I desired pleasant relations with him, and it was my custom to go in there quite frequently, and several times I have endorsed real-estate notes in which I was made the beneficiary——

Mr. MACKEY (interposing): The payee.

Mr. BOARMAN: Beneficiary is right, or the payee.

WITNESS (continuing): Well, or the payee, and then, the notes were endorsed by me without recourse. That is the only connection I had with the matter at all. Mr. McIntire said to me on one occasion that the reason he asked me to do this was that he might be made trustee in the deed of trust.

Cross-examination.

By Mr. HENKLE:

Q. Did you not do that quite a number of times?

A. I think several times.

Q. Do you know enough about the custom among brokers to know whether that is quite customary among them?

Mr. MACKEY: Objected to because irrelevant and irresponsive to anything asked in the direct examination and because the witness has not been offered as an expert as to the customs of brokers.

A. I do not know. My reason for doing those things was that Mr. McIntire requested it and it was purely personal. Our relations were pleasant, and I saw at the time that no harm could attach to me or my estate by virtue of having done such a thing.

Q. But you did it quite a number of times?

A. I think several times. I do not know that I did it quite a number of times, but several times.

Q. Did you ever negotiate any loans yourself for other people?

A. No, sir. I think I was the means on one occasion of Mr. McIntire negotiating a loan for my old employer, Reuben B. Clark, for whom I clerked eleven years—that is, I threw the matter in Mr. McIntire's way, feeling an interest in his making the commission, and I felt at the time that Mr. Clark would be fairly dealt with.

Q. Did you make one transaction with a man named Staley, a one-armed man in the Interior Department?

A. I remember an one-armed man in the Interior Department who lived or had property at Lower Cedar Point.

Q. Did you negotiate a loan with him?

A. I think not. I have no recollection of it. I had some business transactions with Mr. Staley, but that has been so long ago. I think it was in connection with some matters of business that I was attending to for Thomas Banks, a pile-driver.

Q. You do not remember any negotiation of a loan with Mr. Staley?

A. No, sir.

Q. Mr. McIntire says that you put it into his hands, and that he collected it for you. Do you recollect anything of that kind?

957 A. I had some dealings with Staley, but as to whether it was a collection or the mode of collection or what the indebtedness was has entirely gone out of my mind.

Q. This is the point I want to get at, as Mr. McIntire informs me that the notes belonged to you personally and were made payable to another man.

A. No, sir; I never received any money from Mr. Staley. If in my connection with Mr. Staley I ever received any money from him, I received it on account of Thomas Banks, whose books I was keeping at the same time that I was employed by Mr. Clark.

Q. I hand you a promissory note (which is now marked by the examiner for identification "W. T. G. No. 1") and ask whether that is your signature.

A. Yes, sir.

Q. I hand you another promissory note (which is now marked by the examiner for identification "W. T. G. No. 2") and ask whether that is your signature.

A. Yes, sir.

Mr. MACKEY: Counsel for the defendant has objected to any exhibit in these cases going out of the possession of the examiner, and I therefore object to the papers which have been shown the witness for identification going back in the possession of the defendant, Edwin A. McIntire, to be produced at some future time, at his pleasure, as an exhibit, and I submit and shall maintain to the court that if it is the purpose of counsel for the defendant to offer the two papers just identified by the witness in evidence, they should either be offered in evidence now or submitted to the keeping of the examiner, and if it is not done I shall reserve my right to ask the court to rule them out.

Mr. HENKLE: Counsel for the defendant says that he is not entitled to offer the papers in evidence now, as this is Mr. Mackey's examination, and simply presents the papers to the witness for identification of his signature, and that if they are hereafter offered in evidence they will, of course, be exhibited to counsel.

Mr. MACKEY: Counsel for complainant offer no objection to the papers being filed in evidence now, but insist that they ought to be put in the keeping of the examiner for the same reason that counsel objects to the papers already in evidence being kept by any one or handled by any one out of the presence of the examiner.

Redirect.

By Mr. MACKEY:

Q. At the time you endorsed over any notes to Mr. McIntire without recourse had you implicit confidence in his integrity?

A. I had.

Q. What notes were those shown you a moment ago by Mr. McIntire's counsel?

A. Two notes signed by Haynes, drawn to my order and
958 endorsed by me without recourse; one for $650; the amount of the other I do not remember.

WILLIAM T. GALLIHER.

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Testimony for Defence.

APRIL 10, 1893.

* * * * * * *

Emma T. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. You are a sister of the defendant, Edwin A. McIntire, and the same Emma T. McIntire who has heretofore testified in these cases?

A. I am.

Q. You had a sister whose name was Addie McIntire?

A. Yes, sir.

Q. She was — single lady?
A. Yes, sir.
Q. She is dead?
A. Yes, sir.
Q. Did she come to Washington at the same time with you?
A. Yes, sir; at the same time as I did.
Q. You all lived together?
A. Yes, sir.
Q. Who composed your family?
A. My mother, my sister Martha, my sister Addie, and myself.
Q. Do you know whether your sister Addie had money that she had invested?
A. Yes, sir; she invested it in real-estate notes here in Washington.
Q. Do you know anything of her having invested money in a note of Joseph E. Hayne and Laura L. Hayne, secured by a deed of trust upon property No. 916 E street southwest, in this city?
A. Yes, sir.
Q. How do you know that?
A. I was frequently with her. I knew most all of her business. She and I were together most all the time. We were considered twins by a good many people. She knew my affairs and I knew hers; in fact, I knew all about her business and she knew about mine.
Q. Did you go about on business with her every time she went out?
A. I went with her and we were always together.
Q. Look at that promissory note and state whether she owned it or not.
A. Yes, sir.
959 Q. Do you recognize that note?
A. Yes, sir.
Q. Did you ever see it in her possession?
A. Yes, sir.
Q. Look at that indorsement on the back, if you please, and say whether that signature purporting to be hers is genuine.
A. Yes, sir; that is her genuine signature.

Mr. HENKLE: I here give that note in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 1.)

Q. Do you know anything about this deed of trust? I suppose you do not know whether it is genuine or not. Do you know whether your sister, Addie McIntire, had that deed of trust or that paper?
A. Yes, sir.
Q. Is that the deed of trust securing the note to which you have just referred?
A. Yes, sir.
Q. Now, will you look on the back of this deed of trust at these two indorsements, one bearing date January, 1882, which reads:

"On account of failure in payment of interest, the trustee is hereby authorized and directed to sell the within-described property. Addie McIntire." Do you recognize that as her signature?

A. I do.

Q. And the other indorsement reads as follows: "On account of continued failure in payment of interest, trustee is authorized by me to sell at once. August, 1882. Addie McIntire." Do you recognize that as her genuine signature?

A. Yes, sir.

Q. Do you know anything about the sale of that property?

A. Yes, sir; I went to the front of the house at the time the auctioneer was there, at the time of the sale.

Q. Did anybody go with you?

A. I went with my sister, Addie McIntire.

Q. And your brother?

A. Yes, sir, and my brother.

Q. How did you go?

A. We may have walked there; my sister and I may have walked there; my brother, I suppose, went in his buggy; we did not go with him.

Q. Well, you were present at the sale?

A. Yes, sir.

Q. Who was the auctioneer?

A. Mr. Coldwell.

Q. And your brother was present at the sale?

A. My brother, Edwin A. McIntire, was present at the sale.

Q. Who bought the property?

A. I understood that Miss Emma Taylor bought it.

Q. Well, did you hear it knocked down to her?

960 A. I heard it knocked down to a lady. I do not remember the circumstance of that part now about her.

Q. Do you remember hearing at the time that she was the purchaser?

A. I remember learning right afterwards——

Q. (Interposing.) That she was the purchaser?

A. Yes, sir.

Q. Had you before that met her?

A. Yes, sir; I met her a year before that.

Q. On what occasion?

A. At the sale of the property No. 1216 I street northeast, in this city.

Q. And why were you and your sister present at this sale?

A. Because my sister ordered the sale of the property, as the interest was not paid, and she wanted to attend the sale to see that it was sold properly.

Q. Had she any idea of bidding on it?

A. Well, she did not care about buying it, because it was negro property and she had heard so much about the neighborhood; there was some talk at that time about some murder being committed near there, and she did not care about buying it in.

Q. Was that the murder by Tom Wright?

A. I do not know; I think it was a murder of a Jewish peddler, but I do not know his name.

Q. Do you know whether the house was occupied at the time?

A. I think it was vacant at that time.

Q. What makes you think that?

A. Well——

Q. (Interposing.) Is that your recollection?

A. Yes, sir; that is my recollection.

Q. Do you remember anybody being sick in the neighborhood?

A. Yes, sir; there was sickness next door, and the bell was not rung long in consequence of that.

Q. Well, how was it as to bidders; were there any bidders beside Miss Emma Taylor in competition?

A. Yes, sir; there seemed to be quite a number. The auctioneer, from his manner, nodded his head to different ones and raised the price, and I judged there were several bidders.

Cross-examination.

By Mr. MACKEY:

Q. What time of the day was the sale?

A. I do not remember that now.

Q. Was it morning or afternoon?

A. I cannot recollect that now, as it has been so long ago. I can guess.

Q. I do not want you to guess. If you cannot remember what time of day it was, it is all right. Who was there with you?

A. My sister, Addie McIntire.

961 Q. And this woman Emma Taylor was there?

A. Yes, sir; she was there.

Q. Anybody else there that you knew?

A. I do not know. I had not been living in Washington long and did not know many people.

Q. Any bidder on the property?

A. Yes, sir; there were several bidders.

Q. Do you know who they were?

A. I did not know anybody scarcely in the city.

Q. This sale took place where—in front of the house?

A. In front of the house.

Q. Was the bell rung there?

A. The bell did not ring long, because there was sickness next door and they requested not to ring the bell.

Q. There was a flag out—you saw the flag?

A. Yes, sir.

Q. Didn't you know that this woman there was Emma Taylor?

A. Yes, sir; but I did not know that she bought it in at the time.

Q. Did you recognize her as Emma Taylor?

A. I recognized her as the lady I saw a year ago.

Q. You recognized her as the same woman?

A. Yes, sir.

Q. Do you remember what she bid for the property?
A. I do not recollect that now.
Q. Do you know who was the tenant of the house at that time?
A. I think it was vacant.
Q. Nobody in the house?
A. That is my impression, that it was vacant.

EMMA T. McINTIRE.

* * * * * * *

Edwin A. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. You are one of the defendants in this case?
A. Yes, sir.
Q. When did your business connection with the complainants in this case begin and how?
A. On or about the 14th of May, 1879, I was called upon to negotiate a loan for Joseph E. Hayne, of South Carolina, upon the property known as No. 916 E street southwest, in this city.
Q. That is the property described in this suit?
A. Yes, sir.
Q. You were called upon by whom?
A. By Oliver C. Black, the attorney for Joseph E. Hayne; he presented a power of attorney from Joseph E. Hayne, authorizing him to negotiate the loan to take up one then upon the premises, and I negotiated a loan of $457.50 on the 14th of May, 1879,
962 as stated in this deed of trust, recorded in Liber 914, at folio 494, of the land records of the District of Columbia.
Q. You negotiated a loan, you say, for $457.50, and the paper that you hold in your hand is what?
A. This is a deed of trust securing the note, and recorded in Liber 914, at folio 494, of the land records of this District.
Q. Was that executed by Mr. Hayne and his wife?
A. It was.
Q. How do you know that?
A. Only from the acknowledgments which are here.
Q. From whom did you receive it?
A. I think from Mr. Black, although it may possibly have been sent to me by Mr. Hayne. I think I received it from Mr. Black; however, Mr. Black was present when I made the settlement under it.
Q. Do you know that those are the signatures of Mr. and Mrs. Hayne?
A. Yes, sir.
Q. How do you know that?
A. From having had quite a correspondence with Mr. Hayne.

Mr. HENKLE: I here give this deed of trust in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 2.)

Q. Have you preserved the note?

A. The note secured by the trust was paid and sent down to Mr. Hayne.

Q. I hand you several papers which are attached and ask you to state what they are.

A. These are the notes secured under the previous trust and which were paid off by the loan negotiated under the trust just referred to. These were notes held by Mr. John H. Kendall, and every one of the notes here was produced and an account rendered in connection with the notes in Mr. Kendall's handwriting, showing the amount due on the notes of $457.50, the amount of the trust.

Q. And those notes were surrendered to you upon payment of the amount to Mr. Kendall, the holder of the notes?

A. Yes, sir.

Mr. HENKLE: I here give these notes in evidence, together with protests and memorandum of Kendall account.

(NOTE.—And the same are herewith filed in evidence, at-ached together, and marked Exhibit A. H. No. 3.)

Q. What was the next stage in this business?

A. The notes secured under this deed of trust of May 14, 1879, to which I have just referred, were not paid, and Mr. Hayne wrote me to negotiate for him another trust to take that up, and that I attempted to do by that deed which you have in your hand. I attempted to do that by this deed of trust of April 11, 1881, to secure $425 to William T. Galliher, the note for which has heretofore been identified as "W. T. G. No. 1," and is attached to this deed of
963 trust; but on account of a defective acknowledgment of this deed of trust, it being signed by Mr. and Mrs. Hayne, but improperly acknowledged owing to their ignorance of the laws of this District, I could not complete this loan, and then I understood, pending the negotiation of this loan, that there was an amount of taxes unpaid. This matter fell through.

Mr. HENKLE: I here give this deed of trust in evidence, with the note attached thereto.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 4.)

Q. You say that you discovered an accumulation of taxes on the property?

A. Yes, sir.

Q. Why was that second trust for $425?

A. I paid off part of the first trust and reduced it to about that sum.

Q. From what had you paid it off?

A. From rents which I had collected for him, not for her. I never knew her in the transaction.

Q. How long did the matter stand in that way?

A. For a few months, until another trust was negotiated.

Q. Did Mr. Hayne request you to negotiate another loan?

A. He requested me to negotiate another loan. Mr. Kendall was

continually writing to him and writing to me in regard to the loan; about it not being paid.

Q. Then Mr. Kendall's notes were continued into the second trust?

A. Yes, sir.

Q. Who took the notes?

A. He took the notes.

Q. The first notes were held by Mr. Kendall?

A. There were notes prior to this trust of May 14, 1879, which this trust took up. This trust was a second trust.

Q. It was continued when he took the new notes?

A. Yes, sir. Those notes fell due, and he claimed that they were not paid and refused to continue them, and then I negotiated the next loan secured by the deed of trust which you hold there.

Q. Here is a note for $650, dated September 7, 1881, and payable to the order of William T. Galliher, and signed by Joseph E. Hayne and Laura L. Hayne. That is the note upon which you secured the loan of which you are now speaking?

A. Yes, sir.

Q. Now, will you look at that deed of trust—that paper which you hold in your hand purporting to be a deed of trust—and state whether that is the trust to secure that note?

A. This trust, dated September 7, 1881, and recorded in Liber 985, folio 89, was made to take up the trust of the 14th of May, 1879, held by Mr. Kendall, and also to pay the taxes which had accumulated to the amount of about $200. This trust is signed and acknowledged by Joseph E. Hayne and his wife.

964 Q. The note (which has here been filed as Exhibit A. H. No. 1) is payable to the order of William T. Galliher, who has testified in this case that he had no interest in the transaction. How did it happen that his name was used as payee of the note?

A. In accordance with custom, common among brokers, to make some friend the payee of the note when uncertain as to whom they could sell the note in order to complete the transaction and be ready to make the sale when a purchaser comes or when the papers are completed.

Q. Then the note was made before the loan was, in fact, negotiated?

A. Yes, sir; as it was done in nearly every case I have had.

Q. After the loan was made Mr. Galliher indorsed the note?

A. Yes, sir; "without recourse."

Q. And that is his endorsement on the back of the note?

A. Yes, sir.

Q. And then you negotiated it?

A. Yes, sir.

Q. To whom did you sell the note?

A. To my sister, Addie McIntire.

Q. What did she pay for it?

A. The face value.

Q. Six hundred and fifty dollars?

A. Six hundred and fifty dollars.

Q. Was that paid in money?
A. Yes, sir.
Q. Was that her money or yours?
A. It was hers. I had nothing to do with her money.
Q. You mean that you had no interest in it whatever?
A. None at all.
Q. Well, now, what did you do with the money?
A. It was used to pay off the notes secured by this trust of Mr. Kendall of the 14th of May, 1879, and the balance was used for taxes.
Q. There was no balance after paying the taxes and the notes?
A. No, sir; if my recollection serves me right, I had to draw from the rents in order to pay the expenses of the negotiation. I am certain I did.
Q. Well, did you report the transaction?
A. I did, to Mr. Hayne. I reported repeatedly to Mr. Joseph E. Hayne. I wrote him at regular intervals every month or two months.
Q. And was he satisfied with it?
A. He never expressed any dissatisfaction. On the contrary, I had several letters from him in which he wrote he was satisfied with what I did.
Q. Did you continue to be his agent?
A. I did, up to the time of the sale.
Q. Did you collect the rents?
A. Yes, sir.
Q. What did the property rent for?
965 A. Part of the time for six dollars and part of the time eight dollars and nine dollars a month.
Q. What did you do with the rents?
A. I used them to pay his indebtedness; used them to pay for repairs on the property, and I accounted to him regularly for the amount of the rents.
Q. Was there ever any dissatisfaction on his part expressed?
A. Not the slightest that I ever heard of.
Q. Did he ever intimate to you that he had not received money enough or that you had not paid what you received?
A. He never made any complaint whatever. I reported to him regularly and showed him that the house was not paying expenses. It cost almost as much when a new tenant came in to repair the property as was collected from the old tenant. I called upon him to send me money that I might pay his indebtedness, but he never sent me any since the time this trust was recorded, although I have letters showing that he promises repeatedly to do so.
Q. Please state what the paper is which I now hand you.
A. This is a letter written to me by Mr. Joseph E. Hayne, dated Beaufort, South Carolina, April 13, 1880, and asking me how much I then had on hand to meet the second installment which fell due the next month, and telling me that if he could spare the money he would come to see me. The synopsis of my answer thereto is indorsed on the back of it, dated April 20, 1880, stating that I had on

hand belonging to the property $9.50; that the interest, amounting to $16.30, was due on the 1st of May, and that if he had not the balance on hand I could get the holder of the note to wait for the interest until I could collect more rent; that I had placed the insurance in a Washington company and that I had just succeeded in getting a release from Mr. Black's deed of trust and had just put it on record, and that I had paid the Kendall notes and the interest and bills as requested, amounting to $171.48.

Q. That is an abstract of the answer which you made him to that letter?

A. Yes, sir.

Q. Do you know that letter to be from him?

A. Yes, sir.

Q. It is in his handwriting?

A. Yes, sir; I believe it to be so.

Mr. HENKLE: I here give the letter in evidence, together with the indorsement on the back.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 5.)

Q. Please state what this card is which I now hand you.

A. This is a postal card from Mr. Joseph E. Hayne, dated Beaufort, South Carolina, April 19, 1881, and telling me that he would have the papers fixed up and sent by tomorrow's mail, and expressing many thanks for my diligence.

Q. That is from him?

966 A. That is from Mr. Hayne also.

Mr. MACKEY: I object to this method of proving these papers by having the witness read what they contain. If the papers are put in evidence they will speak for themselves, and it is not proper for Mr. McIntire to be reading them in this way.

Mr. HENKLE: I here give this paper in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 6.)

Q. What is this paper?

A. This is a letter from Mr. Joseph E. Hayne, dated Beaufort, South Carolina, April 21, 1881, asking me to accept thanks for my diligence and stating that in two years he will be able to pay off his indebtedness and offering me twenty per cent. interest if I could get him one hundred dollars for one year, and stating that he might be up to see me in December following.

Mr. HENKLE: I here give that letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 7.)

Q. What is the card which I now hand you?

A. This is a postal card from Mr. Joseph E. Hayne and in his handwriting, dated Beaufort, South Carolina, May 16, 1881, acknowledging receipt of my letter and asking me to make some arrangement to pay $140 and he would pay me back by June 1, stating that

he could not afford to let the property be sold, and offering to pay me 20 % interest for what money I could get for him. Although I paid this indebtedness, I never received a cent from him.

Mr. HENKLE: I here give this postal card in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 8.)

Mr. MACKEY: I object to the admission in evidence of all these letters so far as they undertake to show any business transaction between Mr. Hayne on his own account and the defendant, Edwin A. McIntire, on the ground that they are irrelevant and inadmissible, the property here not being Mr. Hayne's, but Mrs. Hayne's, as the record shows, and the suit is brought by her and not by him, and whatever business transactions he may have had with Mr. McIntire has no relevancy to this case.

Q. In that connection I will ask you to state whether you ever had any correspondence with Mrs. Hayne or ever saw her in regard to this transaction affecting the property.

A. I never did. I never received any letter from her, never met her, and never wrote to her.

Q. The business was done solely with her husband?

A. Entirely with her husband, and every one of these letters refers to that property.

Q. What is the paper which I now hand you?

A. This is a letter from Mr. Joseph E. Hayne to me, dated
967 Beaufort, South Carolina, June 8, 1881, acknowledging receipt of my card and telling me that he was sorry that he could not raise the $140 which he promised to send and which I had advanced to pay taxes, and saying that he could pay the whole thing in sixty days, and telling me to go and see his wife's mother, Mrs. Mary Bowen, on 8th street between D and E streets, and get her to assist me in paying the taxes on this property.

Q. Well, did you see Mrs. Bowen?

A. I saw her, but she would not do anything. She said she would not trust him, and that he never would pay his indebtedness.

Mr. MACKEY: Objected to.

WITNESS: Mrs. Moxley told me the same thing. She has testified here that she said that to me. Their representations to me of Mr. Hayne induced me to advise my sister to sell out the property.

Q. Did you make any reply to that letter?

A. I answered this letter, saying, under date of June 10, 1881, that I wanted him to send me as large an installment as possible, and that if the matter could be paid I would have the matter put off for him, and that I had put myself to some inconvenience about his matters, and that he must help himself and not rely upon me, and I wrote him again, on June 27, 1881, that I had not heard from him. He never reported to me on that score at all. I reimbursed myself from the rents I collected.

Mr. HENKLE: I here give that letter, together with the indorsement thereon of Mr. McIntire's answer thereto, in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 9.)

Mr. MACKEY: Let it be understood that my objection, without repetition, is made and applies to each of these letters.

Mr. HENKLE: It is so understood.

Q. What is the paper which I now hand you?

A. This is a letter to me from Mr. Joseph E. Hayne, in his handwriting, dated Beaufort, South Carolina, July 14, 1881, stating that he would remit me a post-office order within ten days, which he never did. The post-office order was to reimburse me for the amount I spent on the property in controversy here.

Mr. HENKLE: I here give this letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 10.)

Q. What is the card which I now hand you?

A. This is a postal card, addressed to me, and is from Mr. Joseph E. Hayne, in his handwriting, dated Bronson, South Carolina, September 13, 1881, stating that he had received my letter, and that he would attend to the matter in a few days, which he did not do. He never attended to anything which he promised to do.

Mr. HENKLE: I here give that postal card in evidence.

968 (NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 11.)

Q. What is the paper which I now hand you?

A. This is a letter from Mr. Joseph E. Hayne to me, in his handwriting, dated Beaufort, South Carolina, September 23, 1881, saying that he sends me papers executed. He alludes to this trust of $650, which he executed, I see, on the same day with this letter. In this letter he states, "I am quite sure that you will not be put to any more trouble in the future. I am quite obliged to you for favors rendered and hope that God will reward you for it." He was always commending me to God after paying money for him.

Q. This letter referred to the last deed of trust?

A. Yes, sir.

Mr. HENKLE: I here give that letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 12.)

Q. What is this card which I now hand you?

A. This is a postal card from Mr. Joseph E. Hayne to me, in his handwriting, and dated Beaufort, South Carolina, June 23, 1882, acknowledging receipt of my letter of the 22nd and asking me to let him know by return mail the amount of interest due and also the taxes and insurance, and that he would make payment at once, and also asking me how much the property would bring if sold and what would come to us outside of the mortgage. There is an indorsement in my handwriting on the face of this postal card,

showing that I wrote to him under date of June 26, 1882; that the last tenant had to be ejected, and that the house had been empty for several months and some repairs had to be made, and that if I sold then the property would not bring anything above the deed of trust and the expenses.

Mr. HENKLE: I here give that postal card in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 13.)

Q. What is the paper which I now hand you?

A. This is a letter from Mr. Joseph E. Hayne to me, in his handwriting, dated Beaufort, South Carolina, July 11, 1882, acknowledging receipt of my letter and stating that the matter would be attended to. The matter referred to this house in question, as all my letters did. I never wrote him on any other subject, except in reference to this house. He writes in this letter that it was not from neglect that the matter was not attended to before, and says, "This is a very hard year for money, but I shall pull through." A pencil memorandum of mine on this letter states that my card called attention to interest and taxes due and to his promises to remit me the amount to pay them.

Q. Did he pay anything?

A. He never did.

969 Mr. HENKLE: I here give this letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 14.)

Q. State what the paper is which I now hand you.

A. This is a memorandum of a letter which I sent to Mr. Hayne, at Beaufort, South Carolina, dated Saturday, August 19, 1882, advising him that the property is now being advertised under the trust, and if he could remit the amount he stated in his letter I could withdraw the advertisement, but that he must do more than promise, and that the sale takes place next Monday week.

Mr. HENKLE: I here give that paper in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 15.)

Q. Did he make any reply to that?

A. Yes, sir; he made a reply to that.

Q. Is this the reply?

A. Yes, sir; dated Beaufort, South Carolina, August 29, 1882, and stating that my card is at hand; that he could not make any remittances at all because of sickness, and saying, "You write me that the place is advertised for sale. Please send me a copy of the advertisement and any other particulars in the case. I find that I can do nothing towards payment before I have picked and packed some cotton I have planted in October." He asks me how long the property was advertised for sale and what day the sale took place.

Mr. HENKLE: I here give that letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 16.)

Q. Did you answer that letter?

A. I did.

Q. What was your answer?

A. My answer was marked on the back of this letter (Exhibit A. H. No. 16), but I have not the date here, sending him a copy of the advertisement and estimating the expenses.

Q. What is the card I now hand you?

A. This is a postal card, dated Marion, South Carolina, October 11, 1882, from Mr. Joseph Hayne to me, in his handwriting, and stating, "I am informed by my wife's mother, Mrs. Mary Bowen, that the house has been sold. I hold in my hand today part of the money to pay on it. Can I redeem it, and for how much? And answer by return mail."

Mr. HENKLE: I here give that postal card in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 17.)

Q. Did you answer that postal card?

A. To that I replied, under date of October 17, 1882, that the party purchasing would be willing for him to redeem it, provided he would do so that month, and telling him that I wrote him
970 some time before the sale, urging him to pay the interest and the sale was delayed. I then wrote him on November 1, 1882, telling him that he could have five months in which to redeem, but that Miss Taylor would hold it no longer for him.

Mr. HENKLE: I here give that letter in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 18.)

Q. Did you get any answer to that?

A. Nothing directly in answer to that, although I got a postal card from him since that time.

Q. What is the paper which I now hand you?

A. This is a postal card from Mr. Joseph E. Hayne to me, in his handwriting, dated Marion, South Carolina, October 19, 1882, asking me to state the price and the terms, and stating that he is obliged to me for my action in the matter.

Q. What does he mean by the price and the terms?

A. He alludes to my letter that I have just read, referring to the terms—that is, the expenses—to which he replied, asking me to give him an estimate of the expenses.

Mr. HENKLE: I here give that postal card in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 19.)

Q. I hand you again the deed of trust, bearing date September 7, 1881, to secure the note of $650 thereto attached, and ask you is that is the note which you have been referring to as being given to

Mr. Galliher and which you negotiated for the purpose of taking up the antecedent trust and the taxes.

A. This is the one.

Q. Look and see if that is the deed of trust given to secure it.

A. Yes, sir.

Q. Look at the signatures to the trust and state whether they are the genuine signatures of the parties thereto.

A. Yes, sir.

Mr. MACKEY: I do not dispute that this is the deed of trust.

Mr. HENKLE: I here give this deed of trust in evidence.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 20.)

Q. Will you look at the indorsements on the back of that deed of trust (Exhibit A. H. No. 20) and read them?

A. These indorsements are signed by Addie McIntire, directing me, as trustee, to sell the property on account of failure in payment of the interest. One is dated in January, 1882, saying, "On account of failure in payment of interest the trustee is hereby authorized and directed to sell the within-described property;" and the other one, dated August, 1882, reads, "On account of continued failure in payment of interest trustee is authorized by me to sell at once." On that authority I advertised the property for sale.

971 Q. Are those the genuine signatures of Addie McIntire to those endorsements?

A. Yes, sir.

Q. You proceeded to make sale upon that order?

A. Yes, sir.

Q. There is a printed cutting pasted on the back of that trust. What is that?

A. This is the advertisement made by virtue of that authority. This advertisement was cut from the National Republican newspaper of August 18, 1882, in the usual form advertising the sale.

Q. Well, now, Mr. McIntire, did the sale take place in pursuance of that advertisement?

A. It did.

Q. Who was the auctioneer?

A. Mr. J. T. Coldwell.

Q. Who was the purchaser at the sale?

A. Emma Taylor.

Q. Was there any competition?

A. There were several bidders.

Q. Who accompanied you to that sale?

A. I do not remember particularly. I remember that my sisters were there. I think I met them there. I think that is the way it happened. I remember, however, that they were there and I was there.

Q. They were aware of the time and place when and where the sale was to occur?

A. Yes, sir; I advised them. I do not know but that I advised them to be present. I ordinarily should have done so, and I think

very likely that I suggested it to them—that is, my sister Addie McIntire and my sister Emma T. McIntire accompanied her, because they were always together.

Q. They were always together?

A. Nearly always. They were very seldom apart.

Q. How intimate were they?

A. They were very intimate; just like the two older sisters always were. My sisters Emma and Addie were younger than I, and Martha and Sara older than I. Martha and Sara, the older sisters, were nearly always together, and Emma and Addie, the younger sisters, were intimate and nearly always together.

Q. Did you convey the property to the purchaser?

A. I did.

Q. What did you do with the proceeds of the sale?

A. They were turned over to my sister Addie.

Q. Was there enough to pay the debt?

A. Not quite enough, but she preferred to take something off rather than buy the property, on account of the number of colored people around there at the time and because of the matter spoken of before about the murder.

Q. I was going to ask you about that, whether property in that neighborhood was depressed at that time in consequence of anything that happened there?

972 A. Very much; on account of a murder which occurred across the street.

Q. What was that murder?

A. The Jewish peddler murder, I always called it, by Tom Wright. People seemed to be afraid to rent houses around in that neighborhood.

Q. Do you remember the fact to which your sister, Emma T. McIntire, has testified about the house being vacant at the time of the sale?

A. Yes, sir; I do. I remember showing some of the parties through it.

Q. It was vacant?

A. Yes, sir; it was vacant.

Q. And you showed some of the bidders through the house?

A. Yes, sir; I had the key of the house and I showed the parties through it.

Q. How about parties being sick in the neighborhood at the time?

A. I remember that distinctly, because I gave orders in regard to the bell ringing. I think it was Mrs. Moxley herself.

Q. What was the direction that you gave about the bell ringing?

A. Not to ring in front of the premises, but a pavement or two off. Mrs. Moxley's house and this house set back from the building line, and the ringing of the bell two or three pavements above or below would not be heard so distinctly.

Q. What did Emma Taylor do with the property?

A. Some time afterwards she sold it to Alfred Brown.

Q. Did you have anything to do with that sale?
A. Yes, sir; the sale was negotiated through me.
Q. Do you remember the terms upon which the sale was made?
A. It was on monthly installments, I have forgotten more than that, secured by deed of trust.
Q. Did you collect the notes?
A. A few of the notes may have been paid in my office. I have no recollection of any being paid there, but I know that all were not paid there.
Q. Mrs. Lucinda Freeman has testified on behalf of the complainant in this case that she was living in the house at the time that this sale was alleged to have taken place, and that the sale did not take place as was claimed. What have you to say to that?
A. I am positive that she did not occupy that house until a month after the sale. According to this lease, which I now produce (and which was shown to Lucinda Freeman when she was upon the witness stand and marked for identification "L. F. No. 1"), she rented the property on the 30th day of September, 1882, a month after the sale.
Q. This is the lease under which she went into possession?
A. Yes, sir.
Q. And the date of it is correct?
A. Yes, sir.
973 Q. Did she sign that lease?
A. Yes, sir; she signed it by her mark, and she identified the lease when she was on the stand.

Mr. HENKLE: I here give that lease in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 21.)

Q. What have you to say in regard to the testimony of Mrs. Moxley to the effect that this sale could not have taken place without her knowledge, and that it did not take place?
A. Mrs. Moxley, a sister of complainant, stated that she attended to her work in the kitchen in the rear of the house, and from there could see everything in front of the house. I know that from her kitchen she cannot see to the street. I know to my own knowledge that she has been sick in bed several times in the past ten or twelve years, at least it was so reported to me. I know that at the time of the sale they begged me not to have the bell rung in front of her house on that account, and, furthermore, I know that I have talked with her about the sales and talked with her previous to the sale, and it was at her suggestion as to the character of Mr. Hayne that I made my recommendation to my sister to order a sale. Mrs. Moxley told me that Mr. Hayne could not be trusted, that he never paid his bills, or words to that effect.

Mr. MACKEY: I object to all this testimony as to statements made by Mrs. Moxley.
WITNESS: She has admitted in her testimony that she said that to me.

Mr. MACKEY: I object to this testimony on the ground that it is hearsay, and I call upon the counsel for the defendant to show some good faith in the defense in this case by forbidding his client to testify as to statements made by third parties which he, as a lawyer, must know is incompetent, and counsel for the defendants knows that such statements will not be admitted and therefore such testimony is entered upon the record for an ulterior or sinister purpose.

Mr. HENKLE: Counsel for defendant says that if Mr. Mackey will examine his own testimony he will find that there is a large amount of hearsay testimony which he allowed to go into the record without objection or suggestion to his witnesses.

Mr. MACKEY: If counsel for the defendant will refer to any hearsay testimony in my evidence I am willing to have it stricken out. That very statement just made by Mr. Henkle contains the admission that the testimony which I am now objecting to is hearsay.

Q. Mrs. Hayne has testified that Oliver Black was a clerk in your office. Is that so?

A. He was never employed in my office and never employed by me at all.

Q. Did Mr. Hayne ever send you any money to apply on these notes?

A. No, sir.

974 Q. At no time?

A. Well, I am positive that he never did since the negotiation of this trust of $650 (Exhibit A. H. No. 20), and I am confident that he did not prior to that. I am certain he did not on that $650 note. Mrs. Hayne says that she sent me $480. That is a falsehood. She never sent me a cent. She makes some other statements which are false.

Mr. HENKLE: I will call your attention to them directly.

Q. Did you fully account for all the rents which you received from that property?

A. I did; I rendered statements at regular intervals to Mr. Hayne.

Q. Did you ever send him any money?

A. I do not remember doing so; on the contrary, the balance was always, I think, in my favor—amount due for interest, or repairs, or something in that way.

Q. Mrs. Hayne says, in paragraph 7th of her bill, that Emma Taylor was a myth—that there was no such person—and that you were really the beneficiary in this conveyance. What do you say to that?

A. I deny both of those allegations.

Cross-examination.

By Mr. MACKEY:

Q. You say that when this loan was made—secured by the deed of trust which you say you afterwards foreclosed—you had to draw on the rents to pay the expenses of the negotiation of the loan?

A. Yes, sir.

Q. You mean by that, I persume, that after you had paid off the existing incumbrances upon the property there was not enough left to pay your commission and expenses of drawing the deed and examining the title, etc.?

A. That is it exactly.

Q. You did examine the title to the property, did you not?

A. I did not examine it myself.

Q. Well, you had it examined?

A. Yes, sir.

Q. You knew that the title stood in the name of Mrs. Hayne?

A. I do not remember now about it. The deed of trust shows how it was drawn.

Q. After that loan was made, you then collected the rents, did you not, of the property?

A. Yes.

Q. And you continued to do so down to the time of the sale?

A. Yes.

Q. And after that you collected the rents for the purchaser until the time of the sale to Alfred Brown?

A. No, sir; I have no record at all showing that. The only paper I have is the agreement (Exhibit A. H. No. 21), which I produced in evidence here. I have no other records than that; no
975 memorandum showing that I collected anything from that woman at all, although I thought when I saw her that I recognized her as a tenant somewhere.

Q. Emma Taylor was the purchaser of that property?

A. Yes, sir.

Q. And she was the owner of the property when you made this agreement (Exhibit A. H. No. 21) renting to Lucinda Freeman?

A. I do not know certainly whether she was or not.

Q. You say the sale took place on the 28th of August, 1882?

A. But she might have sold the property twenty times between that and the 30th of September, the date of that agreement; I do not know.

Q. This lease was dated 32 days after the sale was made?

A. Yes.

Q. Was not Emma Taylor the owner of the property at that time?

A. I told you that I do not know.

Q. Did you not conduct the negotiation of the sale by Emma Taylor to Alfred Brown?

A. I think very likely I did; but she might have sold the property twenty times in that time.

Q. Sold it and rebought it?

A. She might have done so.

Q. Do you think she did?

A. I do not know anything about it.

Q. Do you not know that the deed was made by you to Emma Taylor of this property on the 28th day of August, 1882?

A. No, sir; I do not. I know that the deed was made, but I do not know the date. I suppose the record will show that.

Q. You made a deed to her?

A. Yes, sir; I made a deed to her.

Q. According to the date of this paper (Exhibit A. H. No. 21) is was made thirty-two days after the sale was made?

A. Yes, sir.

Q. And you say that you do not know whether Emma Taylor was the owner of the property at that time or not?

A. No, sir; I could not tell positively—that is, to swear to it.

Q. This paper purports to be an agreement by which you as agent leased the property to Lucinda Freeman. For whom were you agent then?

A. If I knew that I could answer your other question.

Q. You say that you do not know for whom you were agent when you made this agreement of lease?

A. I could not tell positively after this lapse of time.

Q. Did you collect any rent under this agreement?

A. I told you that I have no other record but that now.

Q. Well, you collected the rents of this property yourself after the loan was made to Mr. Hayne. What did you do with those rents?

A. After the loan was made to Mr. Hayne——

976 Q. (Interposing). Yes. You stated a moment ago that you reimbursed yourself for the expense of the negotiation of that loan by collecting the rents of the property.

A. Yes.

Q. You mean by that after the loan was negotiated you collected the rents?

A. Yes.

Q. After you had reimbursed yourself for the expense of the negotiation of the loan, what did you do with the rents?

A. There was not very much of rents. What I did receive I paid on the account to Mr. Hayne. I never knew Mrs. Hayne in the matter at all. She never wrote to me and I never wrote to her.

Q. Did you apply the rents to the payment of the interest which had accumulated on this loan?

A. I am not positive whether I did or not.

Q. Was not that what you undertook to do?

A. I would have done that if I had enough funds in hand, but I had not enough. If your client or the husband of your client will produce the letters I sent to him and the accounts, they will show what I did with the money. I accounted to him regularly.

Q. You did not remit him any money, did you?

A. I do not remember sending him any money.

Q. This trust was foreclosed for failure to pay the interest, was it not?

A. Yes, sir; I do not think the loan had fallen due. Let me look at the paper and I will tell you positively. That is right.

Q. You have said in your direct examination that after this sale

was made you told Mr. Hayne that the purchaser would allow him to redeem if he paid within a given time?

A. Yes, sir.

Q. Then Emma Taylor was the purchaser, was she not?

A. Yes, sir.

Q. She was the person to whom you alluded?

A. Yes, sir.

Q. Therefore she was the owner of the property, then, for a number of months after the sale was made?

A. I could not say who was the owner at the time that lease (Exhibit A. H. No. 21) was written.

Q. In this paper (Exhibit A. H. No. 18), purporting to be a copy of a letter of yours to Rev. J. E. Hayne, and dated October 17, 1882, which was about a little over six weeks after the sale, you say that the lady is willing to allow him to redeem it, provided he did it that month. Were you stating to him the facts?

A. Certainly.

Q. Then afterwards, on November 1, 1882, you wrote him telling him that he could have five months longer in which to redeem, but that Miss Taylor would hold it no longer for him?

A. Yes, sir.

Q. So up to November 1, 1882, Miss Taylor was, according to this letter, the owner of the property, was she not?

977 A. She represented herself so; but when you ask me the positive fact whether she was or not, I cannot say.

Q. Did she authorize you to make any lease for her of the property?

A. I think very likely or I would not have done it.

Q. Having had your memory refreshed to that extent, what do you say about that agreement (Exhibit A. H. No. 21) being made for her?

A. Just as I said before. I do not know whether she owned it then or not.

Q. You, then, saw Miss Taylor several times in reference to this property and its purchase by her and the desire of Mr. Hayne to redeem it, did you not?

A. Yes, sir; I think so.

Q. How did you communicate with Miss Taylor?

A. She was in my office very frequently. She would come in there sometimes two or three times a week.

Q. You say in your letter here (Exhibit A. H. No. 18), "I have been to see the lady who purchased your house and she is willing that you shall redeem it," etc.?

A. I think that is a clerical error. I do not remember seeing her at any place except in a dining-room on F street.

Q. You would go to a dining-room to see her?

A. Yes, sir—that is, I have met her in a dining-room.

Q. Did you eat at that dining-room?

A. Sometimes.

Q. That is where you went to meet her when you wanted to see her?

A. No, sir; I cannot say that. I do not remember meeting her there more than once or twice. She most always came to my office.

Q. You have produced innumerable papers and letters here from Mr. Hayne and other papers in connection with the property. Can you produce anything showing any communication by you to Miss Taylor or by Miss Taylor to you in respect to this property?

A. I have not been able to find anything yet; if I do I will produce it. She was not much of a letter-writer, whereas Mr. Hayne was.

Q. Did you continue to collect the rents for her during this period?

A. I told you that I did not recollect anything about it, and my books were destroyed by fire.

Q. This note of Hayne and wife, dated September 7, 1881, for $650, which you offered in evidence here, being Exhibit A. H. No. 1 in this case, and payable to the order of W. T. Galliher, is endorsed on the back, "Pay to the order of M. McIntire without recourse to me. W. T. Galliher." Will you explain that indorsement?

A. It was indorsed by W. T. Galliher "without recourse" because he had nothing to do with the note. It was indorsed to M. McIntire (meaning my sister, Martha McIntire) with the idea that
978 she would purchase the note; but afterwards, as she did not want it and as she did not want to be responsible for it, therefore she indorsed it without recourse.

Q. M. McIntire is a sister of Addie McIntire?

A. Yes; I think it was a mistake of mine, in the first place, in indorsing it first to the wrong sister and requiring her to sign it.

Q. Did not Martha McIntire direct you first to sell this property?

A. No, sir.

Q. Now, look at that signature "Addie McIntire" on the back of this deed of trust (Exhibit A. H. No. 20) at the foot of the order which reads "On account of failure of payment of interest the trustee is hereby authorized and directed to sell the within-described property," and see whether that "Addie McIntire" is not written over an erasure.

A. Yes; it is, I think. I remember distinctly that I wrote the order myself and signed it myself.

Q. Will you swear that Martha McIntire did not sign that order first?

A. There was no reason for it.

Q. Do you swear that she did not?

A. Yes, sir.

Q. And that is not an erasure of her name?

A. No, sir.

Q. You were the trustee in the deed of trust. Why were you signing an order of that kind?

A. I would have no right to do it. It was merely a clerical error.

I wrote the indorsement and signed my name to it and then, after having noticed my error, scratched it out.

Q. Now, you swear that the advertisement pasted on this deed of trust (Exhibit A. H. No. 20) was put in the National Republican newspaper?

A. Yes, sir; I cut it from the paper of the date stated there.

Q. How many times was it advertised?

A. That I do not know. I leave those matters to the auctioneer. He puts it in whatever newspaper he wants to, and he frames the advertisement *an* any way he wants to.

Q. This advertisement here contains nothing to show that it was inserted in a newspaper. You swear, however, that it was inserted in the National Republican of August 18, 1882?

A. Yes, sir; that is the date marked there of the paper it is cut from.

Q. What is this little mark down at the bottom, "or all cash at the option of the purchaser"?

A. The property was offered that way. After reading the advertisement I desired that option to be given to the purchaser, according to custom when not printed. I do not know whether it would hold according to law, but it was done.

Q. Who was present at the sale of that property?

A. I remember the auctioneer distinctly.

Q. Who else was present?

979 A. I was present and my two sisters and Mrs. Bowen.

Q. Mrs. Bow-n is dead?

A. Yes, sir. Before Mrs. Bowen died she wrote to Mr. Hayne about the sale. I saw the letter she wrote.

Q. How did you see any letter that she wrote to Mr. Hayne?

A. Because I called upon her.

Q. How could she show you any letter that she had written and sent to Mr. Hayne?

A. She wrote it and showed it to me. I suggested some things which she put in the letter.

Q. She is dead?

A. I am told so. I do not know of my own knowledge.

Q. Do you know of any living person who was present at that sale?

A. No, sir.

Q. Do you know any person that you showed through the house?

A. I do not know them by name. Every one of them were colored people. I have been to so many sales since then that it is impossible for me to remember distinctly who were present at each sale.

Q. Your recollection about your transaction with Mr. Hayne in connection with this property is distinct, is it not?

A. It is, after being refreshed by his letters.

Q. But your recollection is at fault, or, rather, you have no recollection at all in respect of your dealing with the property after it came into the hands of Emma Taylor?

A. I told you several times, when you suggested some such thing

as that, that the book of record which I had in my office was destroyed by fire, and that is the only matter I could refresh my memory with on that point; if I had that I would have no hesitation in producing it. I say that your client has my letters. I defy him to produce them. They will show the whole transaction, showing the rents I collected and how I applied them.

Q. I am asking you not what you did with the rents when the property was owned by Mr. Hayne, as you say, but I am asking you what you did with the rents after Emma Taylor bought the property, or whether you have any recollection of collecting the rents after Emma Taylor bought it, and you have said that you have none, although you say that you remember collecting the rents prior to that when it was owned by Mrs. Hayne?

A. Yes, sir; and I stated why I remember one fact but not the other. My recollection has been refreshed by Mr. Hayne's letters and other papers.

Q. Were Emma Taylor's letters or papers burned?

A. No, sir. Mr. Hayne was a person who wrote a letter on every little subject, while Miss Taylor very seldom wrote, and that is the difference between them.

Q. At this sale did Miss Taylor pay you the cash?

A. That is my impression.

Q. Did she examine the title of the property beforehand?

A. I do not know whether she got an abstract or not; pos-
980 sibly the abstract was produced which my sister, Addie McIntire, had, although I have only an indistinct recollection about that.

Q. Did she pay you the cash on the day of the sale?

A. No, sir; that is an unusual thing. I never had that done but once in my experience.

Q. Did you make the deed to her on the day of the sale?

A. I do not remember doing such a thing as that. I might have dated the deed on the date of the sale.

EDWIN A. McINTIRE.

* * * * * * *

(Adjourned.)

MAY 1, 1893.

* * * * * * *

EDWIN A. MCINTIRE, who further deposes and says, being recalled:

By Mr. HENKLE:

Q. Have you any paper from Mr. Coldwell showing services rendered by him as auctioneer in this Hayne case?

A. I have a receipt, which I now produce, from the auctioneer that covers several of these cases here, among others that known as the Hayne case and the one known as the Barbara Brown case; this bill embraces five sales, and I think those two are the only matters pertaining to these cases.

Q. Is this bill in the handwriting of Mr. Coldwell?

A. This bill is in the handwriting of Mr. J. T. Coldwell. I know his handwriting and I have seen him write often.

Q. Did you pay him the money that the receipt indicates?

A. Yes, sir.

Mr. HENKLE: I here give this bill in evidence.

Mr. MACKEY: We object to this paper on the ground that it is incompetent as evidence. Mr. Coldwell's unsworn statement cannot be evidence of any fact in the case. Mr. Coldwell may or may not have sold the property, but this bill would not prove it.

(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 22.)

Mr. HENKLE: I desire that bill to be considered in evidence; also in the case of Barbara Brown *vs.* Edwin A. McIntire, equity, No. 12977.

Mr. MACKEY: Well, I may ask Mr. McIntire some questions about it hereafter, probably in the Brown case.

EDWIN A. McINTIRE.

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981 No. 467 MISSOURI AVE. N. W.,
WASHINGTON, D. C., *August* 1, 1893.

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Virginia J. Coldwell.

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Direct examination.

By Mr. MACKEY:

Q. You are the widow of Joseph T. Coldwell?

A. Yes, sir.

Q. In his lifetime he was an auctioneer?

A. Yes, sir; real-estate broker and auctioneer.

Q. Do you recognize this book?

A. I do.

Q. State what it is.

A. It is a daily record of his sales for 1882 and part of 1883.

Q. The first sale recorded there being dated the 1st of July, 1882?

A. Yes, sir; I had another set of books which I kept for five years, together with a great many papers, and at the expiration of that time, under the advice of Mr. Francis H. Smith, I destroyed them.

Q. Do you mean Mr. Francis H. Smith, the real-estate broker, of this city?

A. Yes, sir; my agent and a very kind friend. I kept all the papers and books intact, including ledgers and a day book, for five years, and he said that it was not necessary to keep them after that, and I only kept this book just for its association.

Q. And this book has been in your possession since your husband's death?

A. It has never been outside of my chamber until I loaned it to Mr. Boarman.

Q. When did you loan it to Mr. Boarman?
A. Really, I could not give the exact date.
Q. Some time ago Mr. Boarman came here and got it?
A. Yes, sir; I presume three years ago.

Mr. MACKEY: I here give that book in evidence.
(NOTE.—And the same is herewith filed in evidence and marked Exhibit A. H. No. 23, with the understanding that the book shall be returned to Mrs. Coldwell at the end of these litigations.)

Cross-examination.

By Mr. HENKLE:

Q. Mrs. Coldwell, where did you keep this book?
A. In my husband's desk in my chamber. It had never been from under lock and key since the death of my husband until the day I loaned it to Mr. Boarman.
Q. How long ago was that?
A. Really, I could not give the exact date, as I did not suppose it would be called up. It may have been a year or two ago.
982 Q. When you loaned it to Mr. Boarman?
A. Yes, sir.
Q. Has he had it ever since?
A. I judged so, because some months ago I had an application to look over some sales in it and I sent a little note to Mr. Boarman, asking him if he was through with it would he return it; he said that he was not, and that it was safe in his desk; where it has been since, of course, I could not say.
Q. You have not had it since?
A. No, sir.
Q. That was about a year ago?
A. I think more than a year; I could not say exactly, but that little book when I gave it to Mr. Boarman was just as my dear husband closed it and laid away.
Q. Do you know whether this book is now in the condition it was when you gave it to Mr. Boarman?
A. I presume so; if you will let me look at it I can answer more positively. (After examination of book:) He promised to return it exactly as I loaned it to him, and I presume it is in exactly the same condition.
Q. Do you know whether your husband kept other books?
A. Oh, yes, sir; he kept a day book and a ledger, where every sale was recorded, and his business.
Q. Do you know where those books are?
A. I destroyed them myself; I burned them at the expiration of five years.
Q. Both the day book and ledger?
A. Yes, sir; I burned them up in the stove in my chamber.
Q. And this is the only book you preserved?
A. Yes, sir; it was so associated with my daily life that I thought I would not destroy it. When our loved ones are gone we prize

such things. It was merely an accident that I preserved this book.

Q. Do you know what the day book showed?

A. Well, the day book was an entry of his daily business.

Q. Including sales?

A. Yes, sir; of all sales.

Q. And then he had a ledger?

A. Oh, yes, sir; they were all complete up to the day of his death.

Q. What did the ledger contain?

A. Entries of the day book.

Q. And those books, together with papers, you destroyed?

A. I did with my own hands. I am very sorry now that I did, if they would have been of any benefit to you gentlemen. He had a great many books and papers relating to real-estate matters which I kept for five years, and then, as I told you, I burned them up, but not before asking Mr. Smith's opinion, and he told me that he did not think it worth while to preserve them any longer, as my husband's business had all been settled up.

Q. What was this book (Exhibit A. H. No. 23) kept for?

983 WITNESS: For what purpose?

Mr. HENKLE: Yes.

A. Well, I *per*sume possibly to record his business or to refer to it. I think mostly that, and to record lot of clippings from the newspapers.

Q. Did this book contain everything that was in the day book?

A. Yes, sir; everything relating to the auction business.

Q. Everything relating to the auction business he put into this book?

A. Yes; everything that occurred between those dates there. He made the entry always every evening after a sale.

Q. Where did he make that entry?

A. In this little book. He would clip from the newspapers and make an entry and then he would often make little notes. You may find notes on the margin there.

Q. Did he make entr*ues* in his day book every day?

A. Yes, sir.

Q. And it was from the day book that he copied into his ledger?

A. Yes, sir.

WITNESS: Is not that the*y* way it is usually done?

Mr. HENKLE: Yes; I presume so.

Q. When did he put these clippings in here?

A. If a sale was published this afternoon, for instance, the first publication, he would clip it from the daily papers and enter it in this little book, and after the sale he would put down the name of the purchaser, the price, etc.

Q. When the publication first came out he would cut it out and paste it in this book?

A. Yes, sir; some two or three weeks ahead of the sale.

Q. And after the sale he made his memoranda in this book?

A. Yes, sir.

Q. Did you ever make an examination of his day book?

A. Oh, yes; I looked over it after he was taken from me. Of course, I understood very well what it was, and I had to refer to it several times in closing his business.

Q. Did not Mr. Coldwell have another book, a larger book than this, which he kept at the same time?

A. No, sir; only the day book and the ledger.

Q. A square book about eight by twelve inches?

A. Well no; sometimes those little books vary in size.

Q. A book larger than this one which he used to keep in his desk?

A. No; I think not. One or two which I destroyed were a little larger than this one.

Q. Where did he keep this book (Exhibit A. H. No. 23)—at the house?

A. Back and forth. He would bring it when he came to dinner before a sale and he would have it in his pocket going to a sale, and then he would always bring the book home with him and
984 lay it on his desk until morning, and then take it to his office. No one had access to it but himself.

Q. Where did he keep his day book?

A. In his desk at the office. All of his books and papers were brought to me from there.

Q. Did he bring his day book home, back and forth?

A. No, sir.

Q. This little book (Exhibit A. H. No. 23) was the only book he brought home?

A. Yes, sir; he carried it to the sale with him.

Q. Do you remember Mr. McIntire writing to you for his books?

WITNESS: Mr. McIntire?

Mr. HENKLE: Yes.

A. No, sir; he never wrote to me for any book. I should have loaned it to him if I had it.

WITNESS: Is this Mr. McIntire?

Mr. MCINTIRE: Yes, madam.

WITNESS: I did not recognize you, Mr. McIntire, so many years have passed and there have been so many changes since I saw you.

Q. Do you not remember Mr. McIntire writing to you?

A. No, sir; I never received anything from him except in regard to a little business he and I had. I never received any note from him about any books.

Q. Do you remember writing to Mr. McIntire a letter saying that you had destroyed all his books?

A. No; I do not. I may have done so, though.

WITNESS: Mr. McIntire, did I not write that I had destroyed all but 1882?

Mr. MCINTIRE: I wrote——

Mr. MACKEY (interposing): I object to Mr. McIntire making any statement about this matter at this time.

WITNESS: My memory is not as good as it was. I do not remember receiving a letter from Mr. McIntire of that nature, but if he has an answer from me I probably received such a letter. Have you my note, Mr. McIntire?

Mr. MCINTIRE: Yes; I presume I have it in my possession. It was written on the back of my letter to you.

WITNESS: I do not remember it at all.

Mr. MCINTIRE: It has been some years ago.

WITNESS: I do not remember it.

Mr. MACKEY: I object to this conversation by Mr. McIntire with the witness on the stand.

Mr. MCINTIRE: The lady asked me a question, and I answered it.

Mr. HENKLE: I object to this book (Exhibit A. H. No. 23) on the ground that the witness has testified that these clippings were pasted in it when the advertisements were first published, and because there is no evidence that it contains all the sales which were made by Mr. Coldwell, and I reserve the right to make other objections to this book when I have had a fuller opportunity to examine it.

985 Redirect examination.

By Mr. MACKEY:

Q. This is the book (Exhibit A. H. No. 23) which your husband carried with him to sales?

A. Yes, sir; in his pocket.

Q. And from which he read the advertisement at the sale?

A. Yes, sir.

VIRGINIA J. COLDWELL.

* * * * * * *

Adjourned to—

FENDALL BUILDING, *August* 1, 1893.

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Arthur R. Colburn.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. State where you reside.

A. I reside at Takoma Park, Maryland.

Q. You are a member of the bar of the supreme court of the District of Columbia?

A. Yes, sir.

Q. Will you state what this book is which I now show you?

A. This book contains the files of the National Republican newspaper, of Washington city, D. C., from July 1, 1882, to December 27, 1882.

Q. Will you turn to the issue of August 18, 1882, and state whether

or not you have examined the columns of that paper for that date to find an advertisement like this which is pasted on the back of Exhibit A. H. No. 20, being a printed advertisement pasted on the back of a deed of trust from Joseph E. Hayne and wife to Edwin A. McIntire, dated September 7, 1880, and which was offered in evidence by the defendant?

A. No, sir; I have examined the paper carefully, but do not find it.

Q. Do you find it anywhere between August 18 and August 28, 1882, inclusive?

A. No, sir.

Q. Do you find the advertisement in the files of that paper at all?

A. Yes, sir.

Q. Where do you find it?

A. In the issue of August 16, 1882.

Q. In the advertisement in the issue of August 16, 1882, I notice at the bottom the words "au 16–1w." Do you find those words printed upon this advertisement pasted on the back of this deed of trust marked Exhibit A. H. No. 20?

986 A. I do not.

Q. Will you state whether or not it appears to have been cut off from that advertisement?

A. It seems so.

Q. You have stated that you find the advertisement in the issue of August 16, 1882. Do you find it in the issue of August 17, 1882?

A. I do not.

Q. How often does that advertisement appear in this paper?

A. Only once, as far as I can find, between the dates mentioned.

Q. You find that it appears in the issue of August 16, 1882, but that it does not appear in the issue of August 28, 1882, nor in any subsequent issue up to August 28, 1882?

A. Yes, sir.

Q. Have you examined the files of this paper carefully for this advertisement?

A. I have looked over the whole paper carefully.

Q. Is the advertisement which you find there in the issue of August 16, 1882, and the advertisement pasted on the back of this deed of trust (Exhibit A. H. No. 20) the same?

A. Yes, sir.

Mr. MACKEY: I will state to counsel for the defendant that this book containing the files of the National Republican between the dates mentioned is borrowed from the office of the Commissioners of the District of Columbia.

NOTE.—It is agreed between counsel that the examiner may copy the advertisement which appears in the issue of August 16, 1882, out of the National Republican upon this record as follows:

"By virtue of a deed of trust dated September 7, 1881, and recorded in Liber 985, folio 89, of the land records for the District of Columbia, and at the request of the party secured thereby, I will

sell at public auction, in front of the premises, on Monday, August 28, 1882, at 5.30 o'clock p. m., all that lot of ground in the city of Washington, D. C., known as the northeast one-quarter part of lot 31, in square 388, together with the improvements.

Terms, one-fourth cash and balance in six, twelve, and eighteen months, at 6 per cent.

E. A. McINTIRE, *Trustee.*

au16–1w"

Cross-examination.

By Mr. HENKLE:

Q. You say that this advertisement, a copy of which is pasted on the back of this deed of trust (Exhibit A. H. No. 20), you find in the National Republican of the issue of the 16th of August, 1882?

A. Yes, sir; in the upper left-hand corner of the third page.

Q. And that this copy pasted on the back of this deed of trust (Exhibit A. H. No. 20) is identical with the advertisement which appears in the issue of that paper of August 16, 1882?

987 A. It is the same, except for the date in the lower left-hand corner, which is apparently cut off of this advertisement, which is pasted on the back of this deed of trust, marked Exhibit A. H. No. 20.

Q. That is no part of the advertisement, is it?

A. Well, that is not within my personal knowledge.

Q. Do you not know whether it is an addition of the printer?

A. I presume the printer put that in without being requested to do so by the party who had the advertisement inserted.

Q. What are those words or characters?

A. "Au16–1w."

Q. What do they mean?

A. I have no personal knowledge of that.

Q. You know what they mean, do you not?

A. I presume they mean August 16, one week—that is, that the advertisement was to be inserted for one week.

ARTHUR R. COLBURN.

* * * * * * *

William M. Smith.

* * * * * * *

Direct examination.

By Mr. MACKEY:

Q. Where do you reside?

A. In the city of Washington, District of Columbia.

Q. What is your business?

A. I am with the real-estate firm of William H. Sanders & Co.

Q. Have you been in the auctioneer's business?

A. I have.

Q. You are an auctioneer, are you not?

A. I am not now, but I have been a licensed auctioneer.

Q. Did you know the late Joseph T. Coldwell?

A. I did.

Q. You may state whether your acquaintance with him was intimate or not.

A. Quite intimate.

Q. Did you have any business relations with him as an auctioneer?

A. I did.

Q. You may look at that book (Exhibit A. H. No. 23) and state if you ever saw it before and what it is.

A. This is the book or a similar book that I have seen frequently with him at his auction-room, in which he recorded his sales.

Q. You may state what that book is used for by an auctioneer.

A. I used the one I have at the office as an auctioneer's record, a day book of original entries.

Q. Of any sale that was made by him?

A. Of any sale that was made. For instance, if I had a sale and that sale was postponed I would then write under that "post-
988 poned," and then readvertise. The postponement is printed at the bottom of that and carried to another page, and then immediately upon the sale being made I enter the purchaser's name and the price paid.

Q. You may state whether or not that was the custom of Mr. Coldwell.

A. I presume it was. It was customary with everybody.

Q. You mean customary with auctioneers?

A. Yes, sir; for the reason that we are called upon frequently. I have a book now which I had more than ten years ago, and I am frequently called upon by persons to know what such a piece of property brought, to whom it was sold, and I can refer to my book and see the entry made on the day of sale.

Q. There are some entries on this book. Take, for instance, this entry on page 39 and the entry on page 44 and another entry at the bottom of that page, namely, "Wm. Smith, salesman." State whether or not that was you.

A. I cannot recall to my recollection the actual sale, but I have no doubt it was me, because I made sales as his salesman.

Q. You made sales for him?

A. Yes, sir; for him as well as for myself.

Mr. BOARMAN: Whose writing is that?

WITNESS: I do not know. It is not mine. You see the reason of the entry of these advertisements. There was a time when the District government required auctioneers to pay a certain percentage on the amount or the commissions of the sale. I used to get from that book the prices and take the amount of the commissions from the sale and pay from that. I think it was one-quarter of one per cent.

Q. Will you turn to page 17 in this book? There is an advertisement of a sale there to take place August 21, 1882. Look around those dates and state whether you find an advertisement of any sale to take place August 28, 1882—that is, do you find that

Mr. Coldwell had any sale there which took place on August 28, 1882?

A. I do not.

Cross-examination.

By Mr. HENKLE:

Q. Were you engaged with Mr. Coldwell as his salesman on October 31, 1882?

A. Well, I cannot tell you. I know this, that I was called upon by Mr. Coldwell, as an auctioneer, to make sales for him as his sale; sometimes he would have more than one sale in an evening, and he would ask me to go and make the other sale for him.

Q. You were not connected with Mr. Coldwell in business?

A. Not in the least, except in that way.

Q. Except that you were in the same line of business?

A. Yes, sir; I accommodated him and he accommodated me.

Q. You were in the same line of business?

989 A. Yes, sir.

Q. And when he had two sales at one time he sometimes called upon you to attend to one of them?

A. Yes, sir; two or more as the case might be.

Q. The probability is that on this 31st day of October, 1882, when you made this sale advertised here on page 44 in this book, Mr. Coldwell had another sale some place else at the same hour of the day?

Mr. MACKEY: Objected to because, in the first place, the question calls upon the witness to state what the probabilities were; and, secondly, because it misstates the facts. There was no sale on August 31st; the property described on that page appears from the entry or Mr. Coldwell himself to have been withdrawn on August 19th, and there never was any sale of it, apparently, from the record book.

Mr. HENKLE: What do you say about that, Mr. Smith; is it not probable that you made that sale at the time because Mr. Coldwell had a sale some other place else at the same time?

A. I could not tell always what his business might have been, but he would come to me and ask me if I would make a sale for him under a certain advertisement, and I would go and do it,

Q. And you said awhile ago that he would make a sale at the same time at some place else?

A. Yes, sir.

Q. And those were the occasions when he was likely to call upon you—that is, when he had two sales conflicting in time?

A. Very likely.

Q. Do you know what the fact was in this particular instance?

A. I could not tell you.

Q. What would be your inference from this fact—that you made the sale for him under that advertisement?

WITNESS: Let me look at the record.

Mr. HENKLE: Here it is.

A. I have no doubt but what I made the sale.

Mr. MACKEY: Which advertisement are you showing him?

Mr. HENKLE: On page 44.

Mr. MACKEY: That is October 31, 1882.

Mr. HENKLE: That is the one you referred to.

Q. What do you say, Mr. Smith, as to the probability that you were called upon by Mr. Coldwell to make that sale because he had another sale the same time?

A. I could not swear to what business he had at the same time, but, at all events, he called upon me to make the sale for him, as he was otherwise engaged; perhaps at a sale.

Q. That would be your inference?

A. That would be my inference.

Q. Then he called upon you to make sales when he had another sale on hand?

A. When he was engaged at some other sale or on other business.

990 Q. Did he have other business than that of making sales of real estate?

A. He was a real-estate dealer, I think.

Q. But he would not have been under the necessity of calling upon another auctioneer simply because he was negotiating a trade?

A. I only know this: that when Mr. Coldwell was engaged otherwise, he having two sales to make at the same hour of the day, he would come to me and ask me to accommodate him in acting as salesman.

Q. Do you know that it was quite frequent with him to have advertisements of sales at two different places on the same day and at the same hour?

A. Well, I do not know that I have seen his advertisements two or three or four on the same day. I have no doubt, however, but what it was so.

Q. Well, do you not know that he did?

A. I could not say.

Q. Is it not a fact that Mr. Coldwell sometimes called on you, asking you to make a sale for him, stating, as the reason for it, that he had another sale at the same hour?

A. Yes, sir.

Q. And that was more than once?

A. Well, I think it has been more than once.

Q. Do you know that Mr. Coldwell kept no other book than that?

A. I do not know. I used to see that book frequently when he would tell me that I would find a duplicate advertisement in his book up at his office. I would go and take it out of the book and put it on a sheet of paper, and when the sale was made I would make a record of it and then carry the record to him.

Q. Now, Mr. Smith, you do not know of your own knowledge that he kept no other books?

A. I do not know. I supposed this was his book or another like it, but I do not know.

Q. Do you not know that he kept what was called a day book?
A. I presumed that was his day book.
Q. Do you not know that he kept another book?
A. I do not know.
Q. That is what you supposed was his day book?
A. I always looked upon that day book or upon my book of the same character as a day book.
Q. You kept a book similar to this?
A. Yes, sir; but no other.
Q. You do not know that Mr. Coldwell kept another book which he called his day book?
A. I do not.
Q. Do you know that he kept a ledger?
A. I do not.
Q. So that the only book of which you have any knowledge at all is this book?
A. Yes, sir.
991 Q. Do you mean that this was the only book which you have seen to know?
A. I think it was.
Q. This covers a certain period. Do you mean to say that he did not have other books similar to this before and after these dates?
A. I never saw but a red-covered book.
Q. You cannot tell whether this is the book or not that you saw, can you?
A. I cannot except from the fact simply that it was a red-covered book of that size.
Q. Are not most of the auctioneers' books red-covered books?
A. No, sir; mine is not. My book was heavy enough to go through the whole of my career as an auctioneer.
Q. This book begins July 1, 1882, and seems to conclude at October 31, 1883. Now, that is little more than a year. Were you connected with his business for a period before July 1st, 1882?
A. Oh, yes.
Q. And after October 1, 1883?
A. I think so.
Q. Did you see books in his office similar to this one before and after this period?
A. Well, I cannot tell as to that. I have seen, as I told you, a book like that which was a sales book, but I do not know whether that was the book or not.
Q. This book comprising the period from July 1, 1882, to October 31, 1883. For the periods before and after that this could not have been the book you saw.
A. Well, if that book commenced and expired at the time you say, there was a book antecedent and subsequent to that, and if I had business with him previous or subsequent to that time, then I saw another red-covered book of that size.
Q. That is the only thing you know about it?
A. That is all I know about it.
Q. You cannot identify this book at all?

A. No, sir; only that is the kind of book he used.
Q. Do you know what Mr. Coldwell's habit was as to keeping this book?
A. I do not.
Q. You do not know of your own knowledge when these entries were made in this book nor how?
A. I do not, except that they were made on the return of my sales to him.
Q. Except what?
A. Well, as I told you, there was a duplicate copy of the advertisement which I pasted on a sheet of paper, and when the sale was made I made a record of the name of the purchaser at the sale and how much the property sold for, and I took that to Mr. Coldwell.
Q. Did he enter it in this book?
A. I do not know.
992 Q. You do not know anything about his habit of keeping this book?
A. No, sir.
Q. Nor the way in which he kept it?
A. I cannot say that, of course.

Redirect examination.

By Mr. MACKEY:

Q. You know what the custom is amongst auctioneers as to mak- real-estate sales—that is, when they have a real-estate sale to make it is pasted in a book of this sort?
A. Yes, sir; and I presume that is the custom with everybody else.
Mr. HENKLE: You do not know that.
WITNESS: I think that was the custom of B. H. Warner when he was an auctioneer. I think he has handed me his book to go and make sales for him.
Q. This is the book that is taken to the auction sale and from this book the advertisement is read and the terms announced?
A. Certainly.
Q. Do you know Mr. Coldwell's handwriting?
A. I do not.

Recross-examination.

By Mr. HENKLE:

Q. Mr. Mackey had you say that the advertisements were read from that book——
A. (Interposing.) Well, they were read from the same kind of a book.
Q. You do not undertake to say that it was that book?
A. I do not.

WM. M. SMITH.

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William W. Boarman.

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Direct examination.

By Mr. MACKEY:

Q. Look at this book (Exhibit A. H. No. 23) and state if you ever saw it before.

A. I have seen this book frequently. I got it from Mrs. Coldwell, the widow of Joseph T. Coldwell, a year or more ago.

Q. In whose possession has it been ever since?

A. It has been in my exclusive possession ever since, with the exception of the little while that Mr. Mackey had it.

Q. You mean a little while recently?

A. Yes; until recently, when I gave it to Mr. Mackey.

Mr. HENKLE: Cross-examination waived.

WM. W. BOARMAN.

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993 FRANKLIN H. MACKEY, one of the solicitors for the complainants, being sworn as a witness on their behalf, deposes and says:

I received this book (Exhibit A. H. No. 23) from Mr. Boarman, and it has been in my possession ever since until I filed it here in evidence and handed it to the examiner.

Mr. HENKLE: Cross-examination waived.

FRANKLIN H. MACKEY.

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Adjourned to August 3, 1893.

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WILLIAM M. SMITH, who further deposes and says, being recalled:

By Mr. MACKEY:

Q. Do you know anything of Mr. Coldwell's charges as an auctioneer—that is, what percentage or commission he charged upon real-estate sales?

A. I do not.

Q. Well, do you know what the rate of charge was by auctioneers of this city generally in 1882 and 1883?

A. On inquiry of the license clerk, when obtaining a license. I wanted to know from him what were the legal charges——

Mr. HENKLE (interposing): Objected to as hearsay.

WITNESS: No, no; I asked him for the law that I might know——

Mr. HENKLE: Objected to. The law is to be produced, and that is not the way to get at it.

WITNESS: He showed me a little book which read, as near as I can recollect—and I believe I am right about it——

Mr. HENKLE (interposing): You do not claim that is evidence, Mr. Mackey?

Mr. MACKEY: I do not care for it. What I want is this:

Q. What do you know of the charges customary by auctioneers in this city for selling real estate; what is the percentage; how much on the first hundred, how much on the second hundred, &c.

Mr. MACKEY: The law says that the auctioneer shall have five per cent.

Mr. HENKLE: I object to that.

A. Those are our charges.

Q. When you made a sale, for instance, in 1882, what did you charge?

A. Five per cent. on the first two hundred dollars.

Mr. HENKLE: Are you saying what the law is on that subject?

WITNESS: What our charge is following the law.

Mr. HENKLE: Objected to; the question is not what Mr. Smith's charge was, but what was the custom.

WITNESS: That was the custom, I suppose; on the first two hundred dollars five per cent., on the next one thousand dollars
994 two per cent., and on any amount thereafter one per cent., except where special contracts are made.

Mr. HENKLE: Cross-examination waived.

WM. M. SMITH.

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Francis H. Smith.

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Direct examination.

By Mr. MACKEY:

Q. Where do you reside, Mr. Smith, and what is your occupation?

A. I reside in Washington city, D. C.; my occupation is that of a real-estate agent, and has been since 1880.

Q. Did you know Joseph T. Coldwell in his lifetime?

A. I did. He occupied a desk in our office.

Q. Will you look at that book (Exhibit A. H. No. 23 in Hayne *vs.* McIntire) and see whether you recognize it or not, and state what it is.

A. Yes, sir; I recognize this book as Mr. Coldwell's auction book containing advertisements of auction sales to be made and memoranda of sales made, or whether sales were postponed or withdrawn. The dates run from July 6, 1882, to October 25, 1883.

Q. What use did he make of that book in sales of properties?

A. He always took the book with him and read the advertisement from it as the announcement of the terms and condition of sale.

Q. Have you seen that book more or less frequently before?

A. Yes, sir; I saw it very frequently while he was in my office. My recollection is that I turned it over to Mrs. Coldwell after his death.

Cross-examination.

By Mr. HENKLE:

Q. Did Mr. Coldwell keep any other books?

A. Yes.

Q. Did he keep a day book?

A. It has been so long since he died that it is difficult to state just from recollection what books he kept. He did not keep a regular set of books. He kept entries of cash transactions in one way or other. I had occasion after his death, in connection with his widow, to go over his accounts, I remember, in respect to a good many people, but I cannot state to you just now what the books were.

Q. Mrs. Coldwell has testified that her husband kept a day book and ledger. Do you recollect anything about that?

A. Yes, sir; he did keep a day book and ledger.

Q. And she further testifies that they were turned over to her?

995 A. That is true.

Q. Do you know anything about what became of them?

A. No, sir.

Q. Do you know what entries were made in the day book—I mean the character of the entries?

A. My recollection is so general that I should not like to be positive. My recollection now is that the entries made in that day book, if you call it a day book, were in the nature of original statements of what took place.

Q. Of his business of that date?

A. Yes, sir; of his business of that date.

Q. And that book you turned over to Mrs. Coldwell?

A. Yes, sir; with the ledger and all his other books.

Q. Are you able to say of your own knowledge as to whether this book which you have testified to (Exhibit A. H. No. 23) contains an accurate journal of his business of every day?

A. No, sir; not from my own knowledge.

Q. Are you able to say whether or not it contains all the sales he made?

A. No, sir; I cannot swear to that, but I have no doubt that it does. He discussed his auction business very frequently in the office and always referred to this book, Exhibit A. H. No. 23.

Q. You cannot say of your own knowledge that it contains all the sales which he made?

A. No, sir.

Q. Do you know whether he kept another book, a larger book than this Exhibit A. H. No. 23, perhaps about eight by twelve inches, in which he made entries of his sales, and advertisements also?

A. I would not undertake to say at this distance of time whether he did or not. I have no distinct recollection about that. I cannot recall that he did, and I doubt if he did.

Q. Do you know that he sometimes had two sales on the same day, about the same hour?

A. Yes, sir.

Q. What did he do in that state of things?

A. He would get somebody else to attend to one of the sales.

Q. Did he have any book which he furnished to the other salesman in that state of case—that is, did he have another book which he furnished to his substitute?

A. I cannot tell you. He must have had a duplicate of the auction advertisement.

Q. You do not know what form that was in?

A. No, sir.

Redirect examination.

By Mr. MACKEY:

Q. You know of his custom, do you not, Mr. Smith, in respect of pasting advertisements of real-estate sales that he had in that book?

996 A. That was his custom.

Q. You, as a real-estate agent, have had frequent dealings with auctioneers in selling real estate, have you not?

A. Yes.

Q. Will you state what you know of their custom of always having a book of that sort (like Exhibit A. H. No. 23), in which they pasted all real-estate sales and carried such a book to the sale and read from it the terms of sale?

A. That has been done in every instance of a sale that I have attended.

Recross-examination.

By Mr. HENKLE:

Q. The auctioneer always had a book at every sale that you attended?

A. Yes, sir; I do not recollect anywhere the auctioneer did not have a book. I have attended sales made by Mr. Coldwell, Mr. Duncanson, Mr. Dowling, and others, and in every instance the terms of sale were read from a book.

Mr. MACKEY: A book something like this one which has been filed in evidence here as Exhibit A. H. No. 23?

WITNESS: A book in which advertisements were pasted; I think usually a little larger than this one.

Mr. HENKLE: I may have asked you before, and, if I have, you will excuse me, whether you undertake to say that this book (Exhibit A. H. No. 23) contains all the sales which Mr. Coldwell made.

A. No, sir; not from my own knowledge.

F. H. SMITH.

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Testimony for Defence in Rebuttal.

MARCH 2, 1894.

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George E. Emmons.

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Direct examination.

By Mr. HENKLE:

Q. Where do you live, Mr. Emmons, and what is your business?

A. My residence is No. 3143 L street northwest, and I am at present secretary and second vice-president of the American Security and Trust Company, doing business at 1405 G street northwest, in this city.

Q. Were you ever associated with the office of B. H. Warner & Co., in the real-estate business in this city?

A. I was; first as a clerk and afterwards as a partner.

Q. How many years were you in that office?

997 A. Taking my service with Mr. B. H. Warner, with whom I went in about 1872, I was connected with him individually and afterwards with the firm of which he was a member until about 1883.

Q. During your connection with that firm did you know Mr. Joseph T. Coldwell?

A. I knew Mr. Coldwell very well.

Q. What relation had he to the same firm?

A. Mr. Coldwell was a clerk for Mr. Warner and afterwards a clerk for the firm of B. H. Warner & Co.

Q. How long did you know him?

A. I knew him from the time I first entered the office of Mr. Warner until up to the time of his death.

Q. You had seen Mr. Coldwell write frequently?

A. Yes, sir.

Q. Do you know his handwriting?

A. I think I should recognize it.

Q. Do you know his signature?

A. I think I should.

Q. I hand you Exhibit A. H. No. 22 in this case of Hayne *vs.* McIntire, being a bill of J. T. Coldwell to E. A. McIntire, trustee, and ask you to look at the signature, "J. T. Coldwell, auct'r," and state whether that is the genuine signature of J. T. Coldwell or not, in your opinion.

A. I should say that is Mr. Coldwell's signature.

Q. Have you any doubt about it?

A. I do not think I would have.

Mr. MACKEY: I object to that question, because the witness has not expressed any doubt about it.

Q. Will you please look at the body of that same paper (Exhibit

A. H. No. 22) and state whether, in your opinion, that is in his handwriting or not, or how much is and how much is not, if any?

A. Well, I should say that portion of it commencing with the words, "To auctioneer's services, sale of W. ½ lot 10, sqr. 388, to W. W. Anderson @ $525," with the figures 16.50, 1.00, and 17.50, to be his handwriting; also the word "bellman."

Q. Well, now, as to the writing below that, what do you say?

A. I could not say whether that is in the handwriting of Mr. Coldwell or not. There is a part of it that has the appearance of his handwriting and other portions of it which seem to my mind to look as if he had not written it.

Q. You knew Mr. Coldwell's business methods, did you not?

A. I observed him during the period that he was connected with the office of Mr. B. H. Warner almost daily.

Q. From your knowledge of Mr. Coldwell as a business man, what would you say as to the probability that he would have signed his name, his genuine signature, down at the bottom of this paper (Exhibit A. H. No. 22), leaving the intermediate space covered by the writing which you say is doubtful?

998 Mr. MACKEY: Objected to as palpably inadmissible and being hypothetical and incompetent on the ground that there is no ground laid for any such testimony on the part of the witness.

A. Answering that question, I should say that Mr. Coldwell would not have receipted and signed the bill with that space above his signature. He was a man who would leave no spaces. During his connection with the office of B. H. Warner he prepared nearly all or probably all the deeds and other legal papers in the office, and he was very particular in that respect.

Q. Are you an expert in handwriting?

A. I would say no; but I do remember and carry distinctly in my mind the handwriting of people with whom I have any business transaction. Mr. Coldwell wrote generally a clear and distinctive hand.

Q. You think you cannot be mistaken about that signature?

A. I don't think I would be.

Mr. MACKEY: We do not dispute the signature.

Q. What about the figures on the left hand of the paper?

A. I would say the same about them that I did about the rest of the paper.

Q. Mr. Emmons, do you know what kind of books Mr. Coldwell used in his business as auctioneer?

A. During his connection with the office of B. H. Warner Mr. Coldwell also carried a license as auctioneer, and at different times he cried sales. I have often seen him with his books; he generally had a large square book, and sometimes he carried a duplicate book with him.

Q. Was the large square book of which you speak his book of original entry or not?

A. Where he entered his daily business; the large square book he had was the book of final entry with him; sometimes he would take that book with him to a sale, and then again I have known him to take the duplicate book to which I have referred and afterwards transcribe his entries in the original book of entries.

Q. Do you recognize that book filed as Exhibit A. H. No. 23 in this case of Hayne *vs.* McIntire?

A. No; I do not; I do not remember that book.

Q. Was or was not the book to which you have referred as the large square book a book similar to that one (Exhibit A. H. No. 23) or not?

Q. The books that I refer to and which I specifically speak of were the books that he used during the time he was in the office of B. H. Warner and of B. H. Warner & Co. I never saw very much of Mr. Coldwell after he left the office of B. H. Warner & Co., and I could not say exactly as to the character of his books after that period. The books that he used during his connection with B. H. Warner are supposed to be, and no doubt are, on file there in the office.

999 Mr. MACKEY: Question and answer objected to as inadmissible, hypothetical, and hearsay.

Q. After he had made a sale what was his usage as to making his entries in the evening?

A. As I said before, if he carried his original book of entry, which he sometimes did, the entry would be completed at the sale, with the exception of afterwards posting the account, which he would always do in the way of entering the amount of the sale, the place of sale, and the expenses connected with the sale; or, if he used the duplicate book, he simply carried a memorandum of the advertisement with him, and he would, eithe- that same afternoon or possibly the next day, complete the entry in the original book.

Q. Do you remember whether or not he sometimes did carry simply a memorandum of the advertisement with him and used that in crying the sale and afterwards make the entry in the original book of entry after his return?

A. I have known him to do so. I have known him to take simply a copy of the advertisement without taking any book.

Mr. MACKEY: Question and answer objected to.

Q. Do you know whether sometimes he had two sales on the same day and at the same hour of the day?

A. I am satisfied that he had, but I could not give you the particular date on which those sales were. I have known that thing to occur.

Q. How did he manage on such occasions?

A. I have myself on one or two occasions cried a sale for him where he had two sales at the same time, he going to one sale and I to the other; then, again, he would by crying one sale very quickly, and if the other sale was in close proximity to that sale, he would reach the other sale and cry both himself.

Q. Mr. Emmons, from your knowledge that you have of the custom of real-estate brokers I wish you would state whether in making business transactions the parties dealing are brought directly in contact with each other?

A. Sometimes it is the practice, but, as a rule, it generally occurs that they are not always together.

Mr. MACKEY: Objected to.

WITNESS: I do not know exactly the line of your examination on that point.

Q. For instance, you are making a sale to me of the property of Mr. Mackey. I want to know whether it would be customary for you to bring us together and introduce us and transact the business in our presence or whether you would deal with us separately.

Mr. MACKEY: Objected to.

A. That depends pretty much on the temper and disposition of the party who is to receive the money and who is required to deliver up the deed. The practice in the office of B. H. Warner
1000 and Co. very often was (the parties having perfect confidence in the firm) that the party would execute the deed and deliver it to us and we would afterwards, either that day or sometimes not for several days, complete the transaction with the purchaser, delivering the deed to him, receiving the money, and afterwards accounting to the proper party for the proceeds of the sale. In that case and in many cases the owner of the property never saw the purchaser and never knew the purchaser personally.

Q. Was that quite frequent or otherwise?

A. In our office it was rather frequent, but I will say this—that there were times when the owner or the party required to deliver up the deed would absolutely refuse to deliver the deed and would require delivery of the money at the time of delivery of the deed, but that was very rarely the case.

Q. Do you know whether or not it is the prevailing custom among brokers in this city?

A. I know that same practice has existed, but to what extent I could not say.

Mr. MACKEY: Objected to for the same reason.

Q. Mr. McIntire has asked me to extend the examination on that point a little and to inquire whether in the matter of lending money upon real estate the lender and the borrower are brought together.

A. In that respect—in the matter of lending money—the person borrowing the money very rarely, if ever, so far as the practice of the office to which I refer was concerned and oftentimes in my own practice while I carried on the real-estate business, saw the person who was loaning the money. The practice in most large offices is that they will loan the money without sometimes having in view an absolute purchaser, oftentimes making the note payable to some person in their office, who, in fact, would loan the money and they would take the note with his indorsement and afterwards sell it, so,

in that respect, the party borrowing the money very rarely, if ever, met the person loaning the money, and as a rule they did not care who it was so they got the money.

Q. Is it not the rule that the lender and borrower do not meet?

A. As a rule they do not come in contact with each other.

Q. And frequently they do not know each other at all?

Mr. MACKEY: Objected to as leading and for the reasons heretofore stated.

A. Personally, I should say not. They simply remember the name of the person to whom they make the note.

Q. Do you know what relations, as to intimacy or otherwise, existed between Mr. Joseph T. Coldwell and Mr. Edwin A. McIntire?

A. I would say that I believe Mr. Coldwell and Mr. McIntire were on very good terms. I never heard Mr. Coldwell say anything to the contrary.

Q. Do you know what Mr. Coldwell's habit was as to writing his own advertisements or otherwise of sale?

1001 A. As a rule he would prepare his own advertisements. I have known him to insert advertisments which were prepared by others.

Q. Did he have any uniformity as to the paper or papers in which he advertised?

A. I cannot say anything about that.

Q. Did you know Henry McIntire, brother of Edwin A. McIntire?

A. Yes, sir.

Q. Do you know whether he and his brother Edwin A. McIntire, as trustees for any of the other family, kept an account in the German-American bank?

Mr. MACKEY: Objected to as incompetent on surrebuttal.

A. During my connection with the office of B. H. Warner, when it was located in the Federal building, during the years 1874, 1875, 1876, and 1877, it was the practice of Mr. Warner to purchase commercial notes, commercial paper, and, by guaranteeing those notes, sell them to different parties, and, among others, it was my business to record and keep tract of and meet those parties in their business transactions in the purchase and sale of those notes. Among others, Mr. Edwin A. McIntire and Mr. Henry McIntire were customers in the purchase of those notes. Notes were sold to Mr. Henry McIntire personally and to Mr. Edwin A. McIntire personally, and Mr. Henry McIntire acted as trustee. Notes were sold to him and Mr. Edwin A. McIntire as trustees, so indorsed to them, and their check, signed as trustees, each signing as an individual and as trustees, was taken in payment of those notes. As to who they were trustees for, I never knew, never had a knowledge of, never heard Mr. McIntire say, and never asked him.

Q. The checks you speak of were given by those gentlemen upon what bank or banks?

A. At the time Mr. Warner's office was in the Federal building and prior to the failure of the German-American National bank, or the German-American bank, I think it was then the German-American bank (whether it was a national bank at that time I cannot say), I think the check was drawn on that bank.

Mr. MACKEY: All this is objected to as incompetent, irrelevant, and immaterial, especially in rebuttal.

Cross-examination.

By Mr. MACKEY:

Q. You say that Mr. Coldwell would usually sign a receipt with his name close up to the last writing on the paper?

A. Invariably so.

Q. But in presenting an auctioneer's bill to Mr. McIntire would he take the same precaution that he would with a stranger?

A. I believe he would.

Q. I understood you to say that the lower part of this bill (Exhibit A. H. No. 22), the last four lines of this bill, above the
1002 words "Rec'd p'ym't," you do not recognize as being in the handwriting of Mr. Coldwell?

A. It does not appear to me that it is, but, as I said in my testimony, some parts of it resemble his handwriting and others do not.

Q. Now, Mr. Emmons, I wish you would take these figures, 16.50, where they first occur in this bill (Exhibit A. H. No. 22) and compare them with the figures 16.50 where they next occur in the second column of this bill, and see what you have to say about them as to being written by the same person.

A. The figures 16.50 where they are first written I should say were undoubtedly written in the handwriting of Mr. Coldwell; the figures 16.50 where they occur in the second place somewhat resemble his writing, in my opinion, but there is just enough doubt in my mind so that I could not say positively that the figures 16.50 where they occur in the second place were written by him.

Q. Compare the character of the handwriting in the figures 16.50 where they occur in the first column with the character of the handwriting in the figures 16.50 where they occur in the 2nd column of this bill, and let us know what you have to say in regard to those figures being in the handwriting of Mr. Coldwell.

A. An examination of this bill (Exhibit A. H. No. 22), to my mind, shows that the bill, with the exception of the last four lines and the signature, was made out first and written with care, which was the usual custom of Mr. Coldwell, and that the last four lines, including the figures, were written afterwards; as I said before, part of those four lines, to my mind, was not written by Mr. Coldwell, if indeed the whole was, and yet other parts resemble his handwriting, similarities about it, and were written after the first part of the bill. I think I have answered your question.

Q. What I asked you in reference to the figures was whether after a careful comparison of those figures, 17.50, 16.50, 10, 17, and 22, in

the second column of that bill (Exhibit A. H. No. 22), with the figures 16.50 and 1.00 in the first column, you think those figures in the second column were written by Mr. Coldwell.

A. Answering that question not as an expert, because I do not claim to be an expert, I should say that the figures 17.50 in the second column of this bill (Exhibit A. H. No. 22) were not extended at the time this bill was rendered, and that the bill was first written with the first 16.50, and the 1.00 was also put in then, but was not extended at that time; that is what I should say; whether afterwards in the extension the figures 17.50 were written by Mr. Coldwell I would have a little doubt, as much doubt as I would have with reference to the last four lines referred to, namely, 16.50, 10, 17, and 22.

Q. You say, Mr. Emmons, that you do not recognize this book, Exhibit A. H. No. 23?

A. I do not recognize this particular book.

Q. Do you recognize Mr. Coldwell's handwriting in that book?

A. I do.

Q. Look at the marks in it and say whether or not that
1003 does not look like a book he used at his sales from the entries made in the book and the manner of the entries.

A. I should say that this book (Exhibit A. H. No. 23) would seem to indicate a regular record of all his sales, as it seems to be systematically carried out.

Q. You say that Mr. Coldwell wrote sometimes the advertisements of the sales and sometimes other persons would write them, at least I understood you to say so. Is that correct?

A. That is correct. Mr. Coldwell was a man who would generally take a great deal of labor upon himself and often he would write the advertisements himself, particularly the deeds of trust, and he was anxious to do the business.

Q. In writing the advertisement of a trustee's sale, for closing a deed of trust, would he sign the name of the trustee or require that trustee to sign?

A. If that trustee could be got at he would require him to sign it, and I do not think he would sign the trustee's name unless directed by the trustee to sign his name.

Q. In advertising a trustee's sale, do you know in what papers he would usually insert the advertisement?

A. He would follow, as a rule, the wish of the party holding the note or the party being secured; I have known him to advertise in all the papers.

Q. All at once?

A. Well, in all the papers—that is, promiscuously.

Q. Do you know in what newspapers Mr. Edwin A. McIntire would usually insert the advertisements of his trustee's sales?

A. I do not.

Q. Do you think it likely that Mr. Coldwell would insert an advertisement of a trustee's sale in a small, unimportant paper of little circulation in preference to advertising it in the Evening Star, the Critic, the Post, or the Republican?

A. I think he would if the party secured would direct him to advertise in any such paper, for instance, at the period that he was doing business in the Critic or Evening Star or papers equally important as those.

Q. If he were not directed by the trustee or the party secured to put it in any particular paper, would he pick out a small, inconsequential paper?

A. No, sir; I think he would put it in the Evening Star, at that time recognized as the best advertising medium.

Q. So that if it went into a small and inconsequential paper it would be because he did so by the direction of the trustee or the party secured—that is to say, he would not of his own volition put an advertisement of a trustee's foreclosure sale in a small, inconsequential paper?

A. I do not want to do Mr. Coldwell injustice. I would like to know in that respect what you would call a small, inconsequential paper so that I could properly answer that question by comparison.

Q. Did you know a daily paper called "The Nation" published here between 1881 and 1884?

1004 A. I cannot remember such a paper. I think there is such a publication or was such a publication.

Q. Was it a daily paper or a weekly paper?

A. I would not call that, strictly speaking, a paper in which I would think proper to put an advertisement of a sale of real estate at auction, as I do not remember such a paper having circulation sufficient at that time for that purpose.

Q. Did you ever know a paper published by John Lynch at the Globe office?

A. You have reference to the paper that was known as "The National Union"—I think that was the name of it.

Q. I had reference to a paper called "The Nation." This is "The National Union" I have reference to now. What do you know about that?

A. I think that is the paper that Mr. John Lynch had something to do with. He started it here and had his main office in Mr. Warner's building on F street.

Q. At what time was it published?

A. I could not say.

Q. Was it published between 1881 and 1884?

A. I would have to refresh my memory.

Mr. MACKEY: I wish you would ascertain so that you can be able to testify when that paper called "The National Union" was published by Mr. Lynch.

WITNESS: I will do so.

Q. Do you know any paper which was published on the west side of 10th street between 1881 and 1884 or about that time?

WITNESS: Tenth between what streets?

Mr. MACKEY: On the west side of Tenth street between E and F streets northwest, in this city.

A. Yes, sir; I think that is the "Washington Sentinel." It was published there up to a recent date.

Q. Is that a German paper?

A. It is not a German paper. It is an English paper published by Mr. Louis Schade.

Q. Is that a daily or a weekly paper?

A. I think that is a weekly paper, if my recollection serves me right. I will not be certain.

Q. It is the organ of the liquor men's society?

A. I will not say that, but I think Mr. Schade rather represents that association in the sentiments of this paper.

Mr. MACKEY: I wish you would post yourself between now and the next session so as to be able to answer whether that is a weekly or daily paper, and also about the "National Union," and when it was published.

WITNESS: I will do so.

Q. Did you know of a German daily paper being published at that time?

A. I do not remember of any German daily paper published at that time, but there may have been.

1005 Q. Do you think Mr. Coldwell, of his own volition, would have put an advertisement of a trustee's sale for foreclosure of real estate in a German paper, daily or weekly?

A. Not unless he would have readvertised it in an English paper—that is my opinion.

Q. From what you know of the man?

A. From what I know of the man.

Q. He was a straightforward and upright man?

A. Yes, sir; if there ever was a straightforward and upright man he was one.

Redirect.

By Mr. HENKLE:

Q. You say that in your opinion the first four lines of this bill was written and subsequently the last four lines, including the figures were written. Now, will you be kind enough to say, as I do not know whether you have said it or not, when in your judgment, with relation to the writing of the last four lines the words "Rec'd p'ym't, J. T. Coldwell, auct'r," were written?

Mr. MACKEY: I object to that question. Mr. Emmons has testified distinctly that he is not an expert, and I think it would take more than an expert to tell that.

A. As I stated, in my opinion, the first four lines, except the extension of the footing thereof, namely, 17.50, were first written, and the next four lines, together with the extension of the footings of the first four lines and the four figures 16.50, 10, 17, and 22, together with the addition, namely, $83, were afterwards added to the bill. In my opinion I should say and believe that whoever made those additions to this bill (Exhibit A. H. No. 23) received the approval by Mr. Coldwell, as undoubtedly the words "Rec'd p'ym't, J. T. Coldwell, auct'r," were written after the additions had been made to the bill.

Recross.

By Mr. MACKEY:

Q. Why do you say that undoubtedly those words, "Rec'd p'ym't, J. T. Coldwell, auct'r," were written after those additions to the bill?

A. For the simple reason that I do not believe Mr. Coldwell would have *received* a bill allowing so much space to be left for the purpose of making any additions in it. I simply give that as my opinion of the man and his methods of doing business.

Q. Might he not have done so in some instance?

A. I do not think he would; if he should it would have been for the purpose of allowing additions to be made.

Q. Have you any bills of Mr. J. T. Coldwell presented to Mr. Warner for services as auctioneer?

1006 A. I have none. There may be bills among the files of B. H. Warner & Co.

GEO. E. EMMONS.

* * * * * * *

MARCH 3, 1894.

* * * * * * *

Edwin A. McIntire.

* * * * * * *

Direct examination.

By Mr. HENKLE:

Q. On pages sixty-two (62) and seventy-six (76) you say, in your former examination in this Hayne case, that the advertisement was published August 18, 1882. What have you to say about that now?

A. When I made that statement I was governed by what appears on the back of Exhibit A. H. No. 20 in this case—that is, the word- "Cut from Nat'l Republican Aug. 18, '82." Those words are in my handwriting, and I believe them to be correct, but I find now, upon examination, that I made a clerical error. I should have said August 16th.

Q. Where was it published?

A. It was published in the National Republican of August 16, 1882.

Q. As to the small red book of Mr. Coldwell which has been given in evidence in this case as Exhibit A. H. No. 23, state, if you know, whether that book was used by Mr. Coldwell in his auctioneer business; and, if so, whether that was the only book he used.

A. I knew Mr. Coldwell during all of his career as auctioneer, and he always had a small book of that size and of that kind for memoranda, which he carried in his pocket. They were not his books of original entry. Those were larger books, which contained accounts of each day's proceedings, and they were uniformally called in the office the day book. This book here produced in evidence

has marked on its side, "Day book," but it was never called a day book, but only a "Memorandum book," and was just a convenient book for any one going to a sale.

Q. Have you examined this small book, Exhibit A. H. No. 20?

A. I have.

Q. Well, do you find it to be correct?

A. No, sir; I know of one error in the matter of a sale that I had myself (*i. e.*, besides the errors made in this and another case).

Mr. MACKEY: I object to that as incompetent.

Q. Well, what was that?

A. I find in the copy of the National Republican that Mr. Mackey filed in this case, in the issue of July 21, 1882, copy of an advertisement of mine, to which is attached the signature of Mr. J. T.
1007 Coldwell, as auctioneer, of a sale to take place on the 2nd of August, 1882——

Mr. MACKEY (interposing): All this is objected to.

WITNESS (continuing): But there is no advertisement in this book (Exhibit A. H. No. 20) of Mr. Coldwell under the date of August 2, 1882, the date where it belonged, if this was the original book of entry.

Q. Where is it entered?

A. The advertisement appears here in this book (Exhibit A. H. No. 20) without any memoranda as to whom the property was sold or anything in regard to it pasted on the page at the head marked "Wednesday, Aug. 5, 1882."

Q. Is that the only entry which appears in that book in regard to this sale?

A. Yes, sir; that is the only sale which appears in this book on August 2, 1882.

Q. You say there is no entry as to whom the sale was made?

A. There is no entry as to whom the sale was made nor any of the circumstances at all.

Q. Nor the amount of the purchase-money?

A. No memorandum at all. I have such knowledge of this book (Exhibit A. H. No. 20) myself that I can say positively in regard to that that it was probably pasted in here to preserve that advertisement.

Q. And the details of the transaction entered in the day book?

A. Yes, sir; I have known Mr. Coldwell to go to sales for me and for other people having the advertisement pinned on a piece of paper three by ten inches in size or as on the deed of trust marked Exhibit A. H. No. 20 in this case, and upon his return from the sale he would then make a memorandum on the day book, but the memorandum book would never contain any account of it at all. Possibly this memorandum book was put into the hands of another auctioneer who was attending to another sale that day for Mr. Coldwell.

Q. Do you remember the day book yourself?

A. Yes; quite well.

Q. What sort of a book was it?

A. It was a book much larger than this one; it was a book about ten by fourteen inches, as well as I can get at the size, and in that he entered everything which occurred in his line of business; he did that when with B. H. Warner and also when with B. H. Warner & Co., of which I was the company, and he did that when he was in business for himself. I was quite intimate with him; this was well known to his wife, and she chose me as one of his pall-bearers at the time of his funeral.

Q. Have you made any effort since this book was offered in evidence (Exhibit A. H. No. 20) to find the book of original entry to which you have referred; and, if so, what effort have you made and with what result?

A. Shortly after the suit was filed, or as soon as I obtained
1008 notice of the filing of the papers in this case, I wrote to Mrs. Coldwell, requesting her to advise me if she had the day book of that year and if she had whether she would allow me to look at it. She replied to me——

Mr. MACKEY (interposing): I object to any statement of the witness as to correspondence between Mrs. Coldwell and himself as inadmissible and *res inter alios*.

WITNESS (continuing): —as she has admitted, saying that the book was destroyed.

Q. You mean as she has testified?

A. Yes, sir.

Q. Now, Mr. McIntire, I wish to make some inquiries of you with regard to Exhibit A. H. No. 22 in this case, being the bill of J. T. Coldwell as auctioneer against you as trustee for services in his line as auctioneer. I wish you would state what your recollection is, if it is definite, about how and when and where this bill was made and all about it.

Mr. MACKEY: I object to this as incompetent on surrebuttal. The bill was put in by the witness and he has testified fully and at length in regard to it.

A. I believe I testified before that this bill is in the handwriting of Mr. J. T. Coldwell, but I did not state the circumstances. Mr. Coldwell presented this bill to me for a sale of the west half of lot ten, in square three hundred and eighty-eight. The bill amounted to $17.50. At that time Mr. Coldwell was indebted to me on notes given by his wife, secured on property on I street northeast, and I suggested to him that as I owed him some other auctioneer matters he might present them in one bill and I might offset certain notes that I held of his. The notes I refer to were given by his wife for the purchase-money of property on I street northeast near Tenth street. He got from me a memorandum of other sales that I enumerated and added them on his bill and then returned to his office, which was but a short distance away, to enter the matter on his day book, and he came back to me and gave me this bill (Exhibit A. H. No. 22) and took certain notes of his wife amounting to this sum or

about that sum. These notes I held. I held a series of notes given by his wife, some of which were paid by her after his death, and it was some of those notes which were used to pay this bill. I should say some of those notes and some other notes given from time to time.

Q. You say that the first part of this bill, amounting to $16.50, was in the bill when presented. How about the word bellman, amounting to one dollar, making a total of $17.50?

A. That was on the original bill with the $17.50 as presented to me at first.

Q. Was the $17.50 carried out on the side?

A. To the best of my recollection it was, but I am not positive on that score.

1009 Q. That part of the bill was presented by him to you at your office and then the conversation ensued to which you have referred?

A. Yes, sir.

Q. Do I understand you to say that he took the bill to his own office?

A. No, sir; he just put on that bill the addition as to the other sales which he had attended to for me; then he sent to his office to make a memorandum of them on his day book, and then he brought the bill back to me.

Q. These additions were made upon the bill in your presence?

A. Yes, sir; they were made in my presence and on a desk in the front of my office, and then he went to his own office to enter it upon his day book as to the dates and lots and squares and then came back within a very short time and gave me the bill receipted.

EDWIN A. McINTIRE.

Cross-examination waived.

* * * * * * *

GEORGE E. EMMONS further deposes and says, being recalled for further cross-examination:

By Mr. MACKEY:

Q. Mr. Emmons, have you secured the information which I asked you at the last session to obtain with reference to the newspapers called "The Washington Sentinel" and the "National Union"?

A. I have ascertained that the Washington Sentinel is a weekly paper. In relation to the National Union, I cannot give you any positive information; such a paper existed, but in what years I cannot further say.

Q. I understood you to testify yesterday that you observed that Mr. Coldwell invariably signed a bill close up to the writing, so as to prevent anything being inserted——

A. (Interposing.) That is what I said. That was his general habit.

Q. Was it his invariable habit?

A. Invariably it was his habit to leave no space.

Q. I hand you a bill rendered by J. T. Coldwell, as auctioneer, to

Mr. Vedantus B. Edwards, trustee, dated May 24, 1882, for auctioneer's services in the sale of the north part of lots 23 and 24, in subdivision of square 944, to Pat. Kennedy, &c., and filed as a voucher in the case of Smith *vs.* Smith, in equity, No. 8065, in the supreme court of the District of Columbia, being a part of the records in that case, which sale was advertised in this little red book marked Exhibit A. H. No. 23 in this case, and ask you whether you recognize that as a bill of Mr. J. T. Coldwell.

A. I should say so.

Q. Is that written close up?

A. No, sir; it is not. To that extent I would say that it was not as closely written as he generally was in the habit of doing.

Q. There are three or four blank lines, are there not?

1010 A. There are three lines—that is, blank lines—between the last entry and the receipt of payment by Mr. Coldwell.

Q. There is room for an insertion of three lines there?

A. Yes, sir.

Q. Now, I hand you another bill taken from the records in said equity cause No. 8065, rendered by Mr. Coldwell for the sale of another piece of property, and dated July 10, 1882, which sale was advertised by him and advertisement of which is to be found in this little red book marked Exhibit A. H. No. 23 in this case, and ask you if that bill is written close up.

A. No, sir; I would say the same thing about this bill that I have said about the other.

Q. There is room for insertion of three or four lines there?

A. There is room for insertion of four lines.

Q. Now, I hand you a bill of Mr. J. T. Coldwell rendered to Mr. Samuel Maddox, as trustee, dated July 5, 1883, and filed as a voucher in the case of Brown *vs.* Brown, equity, No. 8602, in the supreme court of the District of Columbia, for services as auctioneer in the sale of a piece of property, which bill is part of the records in that cause, and the advertisement of which sale is to be found in this little red book marked Exhibit A. H. No. 23 in this case, and I ask you if that is written close up.

A. I say the same thing about that.

Q. There are three or four lines there.

A. There are four blank lines left there.

Q. So, then, it was not his invariable practice to write his bills close up?

A. I would still say, notwithstanding the production of these bills, that in my observation of his habits while in the office of B. H. Warner his habit was to leave no space; these bills, however, appear to show on their face that there were spaces left which would indicate that there were times when he had not been as particular as I had observed.

Q. Do you observe that the dates of these three bills which I have produced here today are May 24th and July 10, 1882, and July 5, 1883?

A. Yes, sir; they show those dates on their face.

Q. As to this bill marked Exhibit A. H. No. 22 in this case and

about which some question has been raised as to the last four lines it would appear by the date of the last item that it was rendered September 29, 1882—about 1882 or 1883—does it not—that is, it would seem so from the date of the last entry?

A. I should say that it was certainly rendered after the first service, the item of which is dated on this bill February 19, 1881, and then afterwards these other items were put in.

Q. The bill was receipted subsequent to September, 1882, was it not, or about that time?

A. I should presume not. I should presume that the bill was not receipted at the expiration of the last item dated on this bill, September 29, 1882.

1011 Q. I just asked you for the fact whether you did not observe that September 29, 1882, was the last item on that bill.

A. Well, whether that "'82" refers to "Sept. 29" I do not know, or whether it refers to the entry of August 28, 1882.

Q. At all events this bill appears to have been signed somewhere about the latter part of 1882 or the early part of 1883, does it not—that is, on its face does not that appear to be the fact?

A. I should say that the bill was signed at some date after September 29; whether 1882 or 1883 I could not say.

Q. Somewhere about 1882 or 1883 this bill (Exhibit A. H. No. 22) appears to have been signed?

A. Yes, sir; after September 29th, whatever year it was.

Q. And these bills which I have produced here, three in number, and shown you, were rendered about 1882 or 1883, showing or seeming to show that about that time he was in the habit of writing his name at the bottom of a bill as well as close up. Do not these bills show that fact?

A. I can say that these bills you refer to show that undoubtedly at that period he rendered bills in which spaces or blank lines were left.

Q. It would be easy enough to insert lines in these blank spaces or lines between the last item and the receipted payment by Mr. Coldwell on those three bills?

A. Yes, sir; in these three bills the same as in the other.

GEO. E. EMMONS.

* * * * * * *

NOTE.—The examiner is requested by the solicitors for the respective parties to enter of record the following stipulation as to the evidence in this case:

It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, equity, No. 12761; Brown *vs.* McIntire, equity, No. 12977; Ackerman *vs.* McIntire, equity, No. 12978; Southey *vs.* McIntire, equity, No. 13034, and Hayne *vs.* McIntire, equity, No. 13177, in the supreme court of the District of Columbia, so far as the same may be relevant to the issues raised on this case of Hayne *vs.* McIntire (equity, No. 13177), in respect of Emma Taylor, Martha McIntire,

or Edwin A. McIntire, may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein, subject to all and any objection as to the materiality and competency thereof which could have been made if the same had been taken herein.

* * * * * * *

EXHIBIT A. H. No. 1.

Secured by deed of trust upon part of lot 31, square 388, Washington, D. C.

E. A. McINTIRE, *Trustee.*

1012 $650. WASHINGTON, D. C., *September* 7, 1881.

Three years after date we jointly and severally promise to pay to the order of William T. Galliher six hundred and fifty dollars, value received, with interest until paid at the rate of ten per cent. per annum, payable quarterly.

JOSEPH E. HAYNE.
LAURA L. HAYNE.

Endorsed: Pay to order of M. McIntire without recourse to me. W. T. Galliher. Without recourse to me. M. McIntire. Addie McIntire.

EXHIBIT A. H. No. 2

Is a deed dated on the 14th day of May, 1879, between Joseph E. Hayne and Laura L. Hayne, his wife, of the city of Charleston, South Carolina, of the first part, "and E. A. McIntire, of the city of Washington, in the District of Columbia, trustee, of the second part." Recites indebtedness of Hayne and wife to John E. Kendall of $457.50, for which they have executed their joint and several notes, one for $407.50, dated May 1, 1879, and payable three years after date, with interest at 8 % per annum, until paid, payable semi-annually; and the other note for $50, dated May 14, 1879, and payable 6 months after date, with interest until paid, at 10 % per annum. Recites the desire of the parties of the first part to secure the payment of said notes, and then conveys the property known as the northeast ¼ part of lot 31, in square numbered 388, being the east 15 feet front on E street south by 15 deep. The deed is in the ordinary form of a deed of trust used in this District to secure an indebtedness. It is acknowledged at Beaufort, South Carolina, before one William J. Whipper, notary public, at Beaufort, S. C., on the 29th day of May, 1879.

EXHIBIT A. H. No. 3.

J. E. & L. L. Hayne to Jno. E. Kendall, Dr.

1879.			
May 5.	To 6 notes, $50 each	300	00
	" 1 " " "	50	00
	" 21 months' in'st, 8 per cent	60	00
	" balance on one note	38	55
	" 4 protests	7	80
		456	35
	Insurance	1	15
		457	50

Attached to the above paper are the six notes referred to in said paper, each of them being for $50, dated the 1st day of August, 1877, made payable in 9, 12, 15, 18, 21, and 24 — after date respectively to the order of Joseph Williams, with interest at 8 % per
1013 annum, and signed by Joseph E. Hayne and Laura L. Hayne.

Attached to each of said notes, excepting the last, is a notarial certificate of protest in the usual form, reciting in each of them the presentation of the note to the book-keeper of the Bank of Washington and his reply that they were not good.

EXHIBIT A. H. No. 4.

Secured by deed of trust upon p't lot 31, square 388, Washington, D. C.

E. A. McINTIRE, *Trustee.*

$425. WASHINGTON, D. C., *April 11th*, 1881.

Three years after date we, jointly and severally, promise to pay to the order of William T. Galliher four hundred and twenty-five dollars, value received, with interest until paid, at the rate of ten per cent. per annum, payable quarterly.

JOSEPH E. HAYNE.
LAURA L. HAYNE.

No. —. Due —— —, 18—.

Residence or place of business, ——.

Endorsed: Without recourse to me. W. T. Galliher.

E. A. McIntire, Real-estate broker, Washington, D. C.

This indenture, made this eleventh day of April, in the year of our Lord one thousand eight hundred and eighty-one (1881), between Joseph E. Hayne and Laura L. Hayne his wife (formerly Laura L. Bowen) both of Beaufort, South Carolina of the first part, and Edwin A. McIntire, of Washington, D. C., trustee, of the second part:

Whereas, the said Joseph E. Hayne and Laura L. Hayne stand

justly indebted unto William T. Galliher in the sum of four hundred and twenty-five dollars money loaned and advanced, have executed — delivered their joint and several promissory note of even date herewith, drawn for said sum and payable in three years after date to the order of said Galliher with interest until paid at the rate of ten per cent. per annum payable quarterly and being desirous to secure the punctual payment of said note when and as the same shall respectively become due and payable, with all interest and costs due and accruing thereon, they therefore execute these presents.

Now therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar in lawful money of the United States to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged ha- granted bargained sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said
1014 party of the second part, his heirs, and assigns the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises known and distinguished as and being the northeast one-quarter part of lot thirty-one (31) in square three hundred and eighty-eight, being the east thirteen feet on "E" street, of said lot, by a depth of sixty-two and one-half feet, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however of the said parties of the first part, of, in, to, or out of the said described real estate and premises.

To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said Joseph E. Hayne his heirs or assigns, to use and occupy the said described premises, and the rents, issues and profits thereof, to take, have and apply, to and for his and their *their* sole use and benefit until default be made in the payment of said note or any instalment of interest thereon or any proper cost, charge, commission, half commission or expense in and about the same.

And upon the full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Joseph E. Hayne and Laura L. Hayne, their heirs or assigns, at their *their* cost.

And upon this further trust, that upon default being made in the payment of said note or any instalment of interest thereon, or any proper cost, charge, commission, half commission or expense in and about the same, then and at any time thereafter, to sell the said de-

scribed real estate and premises, at public auction, upon such terms and conditions and as such time and place and after such previous public advertisement as the said party of the second part, his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation a commission of ten per cent., on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Joseph E. Hayne and Laura L. Hayne their executors, administrators or assigns.

And the said Joseph E. Hayne and Laura L. Hayne do hereby agree, at their own cost, during all the time, wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due and to
1015 keep the said improvements insured against fire in some responsible fire insurance company to the satisfaction of said party of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to so pay said taxes and assessments or to so insure, any party secured hereby may pay said taxes and assessments or may have said improvements insured and the expenses thereof shall be a charge hereby secured and bear like interest, as the matter secured. And upon any such failure to pay said taxes and assessments, or to so insure, the said party of the second part, his heirs may sell the said described real estate and premises, and apply the proceeds of said sale as hereinbefore directed.

And it is expressly provided, that if said property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half of the commission above provided, to be computed on the amount of the debt hereby secured, and the same is hereby secured.

In testimony whereof, the said parties of the first part, have hereunto set their hand- and seal- on the day and year first hereinbefore written.

JOSEPH E. HAYNE. [SEAL.]
LAURA L. HAYNE. [SEAL.]

Signed, sealed, and delivered in the presence of—
NETTIE F. E. LANGLEY.
MAGGIE A. HARRIS.

UNITED STATES OF AMERICA,
Beaufort County, State of South Carolina.

I, S. J. Bampfield, clerk of the circuit court in and for the county aforesaid, do hereby certify that Joseph E. Hayne and Laura L. Hayne, parties to a certain deed bearing date on the eleventh day

of April, A. D. 1881, and hereto annexed, personally appeared before me, in the district aforesaid, the said Joseph E. Hayne and Laura L. Hayne being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Laura L. Hayne, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this twenty-first day of April, A. D. 1881.

S. J. BAMPFIELD,
Clerk Circuit Court.

[SEAL.]

BEAUFORT COUNTY, }
State of South Carolina, } ss:

I, John G. Barnwell, trial justice in and for said county & State, do hereby certify that Joseph E. Hayne, —— ——, parties to 1016 a certain deed bearing date on the eleventh day of April, A. D. 1881, and hereto annexed, personally appeared before me in the district aforesaid, the said Joseph E. Hayne and Laura L. Hayne being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Laura L. Hayne, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willing- signed, sealed, and delivered the same, and that she wished not to retract it.

LAURA L. HAYNE.
—— ——.

Given under my hand and seal this third day of May, A. D. 1881.

JOHN G. BARNWELL, [SEAL.]
Trial Justice.

STATE OF SOUTH CAROLINA, }
County of Beaufort, } ss:

I, S. J. Bampfield, clerk circuit court for Beaufort county, in the State aforesaid, do hereby certify that John G. Bonnwell, Esq, before whom the foregoing acknowledgement was made (as appears by his name in his own handwriting attesting the same), was at the date thereof a trial justice for the county & State aforesaid, who had been duly appointed and qualified and had signed the roll of trial justices according to law; that, according to the laws of this State, a trial justice is authorized to take acknowledgements, et cetera, and that the roll of trial justices for his county is kept in the office of the clerk of the circuit court.

In testimony whereof I have hereunto set my hand and seal of office, at Beaufort, this third day of May, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] S. J. BAMPFIELD, *C. C. C.*

Indorsed: Deed of trust, Jos. E. Hayne and Laura L. Hayne to Edwin A. McIntire, trustee. Received for record on the — day of ——, A. D. 188–, at — o'clock, and recorded in Liber No. —, folio —, one of the land records for the District of Columbia, and examined by —— ——, recorder.

EXHIBIT A. H. No. 5.

BEAUFORT, S. C., *April 13th*, 1880.

Mr. E. A. McIntire, #918 F street, Washington, D. C.

DEAR SIR: You will please drop me a few lines, stating how much you have on hand from the rent to meet the second installment, which falls due next month. Please let me hear from — by Monday. If I could spare the money I would come that way, as I have to go to St. Louis, Mo., to attend my church general conference, but your statement will answer.

Yours, &c., J. E. HAYNE.

Box 93, Beaufort, S. C.

1017 *Ans.*

AP'L 20, '80.

I have on hand belonging to the property the sum of $9.50. The interest, $16.30, is due May 1st, but if you have not got the balance on hand I can get the holder of the note to wait for the interest until I collect more rent. I have had the place insured in a Wash'n Co. and have just succeeded in getting a release from Mr. Black's deed of trust. I put the D. R. on record today. I paid the Kendall notes and the interest & bills as you requested, am't'g to $171.48.

EXHIBIT A. H. No. 6.

POSTAL CARD. Beaufort, Apr. 19, S. C. (Stamp.)

Write the address on this side, the message on the other.

Mr. E. A. McINTIRE,
#918 F street,
Washington, D. C.

(Reverse.)

BEAUFORT, S. C., *April 19th*, 1881.

DEAR SIR: I will have the papers fixed up and sent by tomorrow's mail. I will write you more fully. Many thanks for your diligence.

J. E. HAYNE.

EXHIBIT A. H. No. 7.

BEAUFORT, S. C., *April* 21*st*, 1881.

DEAR SIR: You will please accept my many thanks for your vilgelance. Being involved with *tow* other pieces of property here, I found it impossible to do anything in the past with that that you are agent for. If you can raise me $100—one hundred dollars at the same rate of the $425—I shall be able, with what I will get in a few months, to pay off the debt of one piece here, & can within the next two years pay off the entire debt of that. So anxious am I to get through here that I will pay 20 % interest on $100.00 for one year. Write me by return mail. If favorable, you can make out the papers & forward at once. If you cannot get $100, get $75. I may be up there in December next.

Yours, &c., J. E. HAYNE.

1018 EXHIBIT A. H. No. 8.

POSTAL CARD. Beaufort, May 16, S. C. (Stamp.)

Write the address on this side, the message on the other.

Mr. E. A. McINTIRE,
918 F street,
Washington, D. C.

(Reverse.)

BEAUFORT, S. C., *May* 16*th*, 1881.

Mr. E. A. McIntire.

DEAR SIR: Your letter was received this morning about 9 o'clock You will please make some arrangements to pay the $140 and I will pay by June 1st. By no means must you allow it to be sold. I cannot raise the $140 now, because of previous arrangements, but will by June 1st.

Yours, &c., J. E. HAYNE.

[Written across the face:] If you cannot make the arrangement dispatch by Friday; but pay as high as 20c. per cent. on the money but that you might raise it.

EXHIBIT A. H. No. 9.

BEAUFORT, S. C., *June* 8*th*, 1881.

DEAR SIR: Your card is to hand. I am sorry that I am forced to tell you that I have done all in my power to raise the $140.46 and failed. I can only say I leave the matter to your good judgment and the mercy of the tax officers. I can pay the whole thing within 60 days if they will receive it in part payment; but to do otherwise it is out of my power just now. My salary is $1,084 a

year, but the most of it is paid in the fall & winter. I will send you by Monday's mail all that I can raise between this and Sunday. The people of the South are very poor at this time. If they will sell you must buy in the property; if you cannot, go and see my wife's mother, Mrs. Mary Bowen, on 8th street between D and E streets, # 420, South Washington, & get her to do it; but I would prefer you to do it for me. I am quite sure that you will loose nothing by the act or favor. I have made arrangements to pay that property out of debt this January coming, & if you will only help me out of my present trouble I shall be under many obligations to you for it. I am so worried about the matter that I cannot rest. Do, not for my sake, but my children and suffering humanity, help me & I am sure that God will reward you for it. Contend for but 60 days more & the bill will be paid. My remittance will be every week from Monday next until paid.

1019 I close with the hope that you will do for me what I request and pray.

Yours, &c.,

J. E. HAYNE,
Beaufort, S. C., P. O. Box 93.

P. S.—I can only collect my payment or salary on Saturdays and Sundays.

Ans'd June 10, '81.—Send as large instalment as possible [every week, &]* if the matter can be paid I will have it put off for you. I have put myself to some inconvenience about your matters, but you must help yourself & not rely so much on me.

Resp'y,

E. A. M.

Wrote again June 27, '81, that as yet I had heard nothing from him.

EXHIBIT A. H. No. 10.

BEAUFORT, S. C., *July 14th*, 1881.

DEAR SIR: This is the first letter I have been able to write for the last four weeks. I took the country fever on Combehee, one of my preaching points, Rice Fields, and it was impossible for me to do anything up to date. I was not even at home. I just got here last night. I am still under treatment of the Dr. I am sorry that I could not comply with my first agreement, but I will remit you a P. O. within ten days. I am quite feeble today after a long travel.

Yours, &c.,

J. E. HAYNE.

[* Erased in copy.]

EXHIBIT A. H. No. 11.

POSTAL CARD. Brunson, Sep. 13, S. C. (Stamp.)

Write the address on this side, the message on the other.

Mr. EDWIN A. McINTIRE,
918 F street N. W.,
Washington, D. C.

(Reverse.)

BRUNSON, S. C., *Sept.* 13*th*, 1881.

DEAR SIR: I just received your letter this morning, sent to this place by my wife. I will attend to the matter in a very few days. The papers will be executed properly and be in your hands by the 24th of this month. My wife is just out of confinement & will not be able to go out before the 21st, being one month. I am under many obligations to you. I shall never forget past favors.

J. E. H.

1020 EXHIBIT A. H. No. 12.

BEAUFORT, S. C., *Sept.* 23*d*, 1881.

I send you the papers executed. I hope that they are all correct. I am quite sure that you will not be put to any more trouble in the future. I am quite oblige- to you for favors rendered & hope that God will reward you for it.

Yours, &c., J. E. HAYNE.

EXHIBIT A. H. No. 13.

POSTAL CARD. Beaufort, Jun. 23, S. C. (Stamp.)

Nothing but the address can be placed on this side.

Mr. E. A. McINTIRE,
918 F St.,
Washington, D. C.

(Reverse.)

BEAUFORT, S. C., *June* 23*d*, 1882.

DEAR SIR: Your card came to hand the 22d too late for me to reply by return mail. Let me know by return mail the amount of *intrust* due, also the taxes & insurance, & I will make payment at once. You can also let me know how much will the place bring, if sold, or what would come to us outside of the mortgage.

Yours, &c., J. E. HAYNE.

Ans'd June 26, '82:

Int.....	$48 78
Ins.....	4
Total.....	$52 78

Last tenants had to be ejected and house has been empty several months. There will have to be some repairs made. If I sell now it would not bring anything above the D. T. & expenses.

EXHIBIT A. H. No. 14.

BEAUFORT, S. C., *July 11th*, 1882.

DEAR SIR: Your card is at hand; contaiints carefully noted. The matter is being attended to and will reach completion within 20 days. It was not from neglect that the matter was not attend- to before, neither is it carelessness that your card was not answered. My travel is very extensive in my district, and when your cards come I am often away from home. This is a very hard year for money, but I shall pull through.

Yours, &c., J. E. HAYNE.

1021 EXHIBIT A. H. No. 15.

(*Copy of Postal Card.*)

SAT'Y, *Aug.* 19, '82.

Rev. J. E. Hayne, Beaufort, S. C.:

The property is now advertised for sale under the trust. If you can remit the amount you stated in your letter I can withdraw the advertisement; but you must do more than promise. The sale takes place next Monday week.

Resp'y, E. A. McINTIRE.

EXHIBIT A. H. No. 16.

BEAUFORT, S. C., *Aug. 29th*, 1882.

Mr. E. A. McIntire, Washington, D. C.

DEAR SIR: Your card is at hand; contaiints carefully noted. I could not make any remittances at all because of sickness. You write me that the place is advertised for sale. Please send me a copy of the advertisement and any other particulars in the case. I find that I can do nothing toward payment before I have picked and packed some cotton I have planted in October. If the terms of the sale are as they are in this county & State I can redeem the property in three months. Don't fail to give me all necessary information by next Saturday, if not sooner, how long the property was advertised for sale; what day sale will take place.

Yours, J. E. HAYNE.

Ans'd Sept. 2, sending copy of adv. & estimate of expenses.

EXHIBIT A. H. No. 17.

POSTAL CARD. Marion C. H., Oct. 11, 1882, S. C. (Stamp.)

Nothing but the address can be on this side.

Mr. E. A. McINTIRE,
#918 F St.,
Washington, D. C.

(Reverse.)

MARION, S. C., *Oct.* 11*th*, 1882.

Mr. E. A. McIntire.

DEAR SIR: I am informed by my wife's mother, Mrs. Mary Bowen, that the house has been sold. I hold in my hand today part of the money to pay on it. Can I redeem it, & for how much? Answer by return mail.

J. E. HAYNE.

1022 EXHIBIT A. H. No. 18.

Copy. Mailed Oct. 17, '82.

No. 918 F, WASH'N, D. C., *Oct.* 17, '82.

Rev. J. E. Hayne, Marion, S. C.

D'R S'R: Your card of 11 inst. at hand. I have been to see the lady who purchased your house & she is willing that you redeem it provided you do so this month, as she expects to leave Wash'n on or about November 1.

I wrote you some time before the sale urging you to forward the interest, and the sale was delayed a long time to give you an opportunity to respond. What amount of cash can you pay?

Resp'y, &c.,
(Signed) E. A. McINTIRE.

Nov. 1, '82.—Wrote again telling him he could have 5 months longer in which to redeem, but that Miss Taylor would hold it no longer for him.

EXHIBIT A. H. No. 19.

POSTAL CARD. Marion C. H., Oct. 19, 1882, S. C. (Stamp.)

Nothing but the address can be placed on this side.

Mr. E. A. McINTIRE,
#918 F St.,
Washington, D. C.

(Reverse.)

MARION, S. C., *Oct. 18th*, '82.

DEAR SIR: Please state the price & the terms. I am oblige- to you for your action in the matter.

J. E. HAYNE.

Ans'd Oct. 24, '82, that the loan was 675
Expenses..... 75

To..... 750

EXHIBIT A. H. No. 20.

This indenture, made this seventh day of September in the year of our Lord one thousand eight hundred and eighty-one (1881) between Joseph E. Hayne and Laura L. Hayne his wife (formerly Laura L. Bowen) both of Beaufort in the State of South Carolina of the first part, and Edwin A. McIntire of the city of Washington, D. C., trustee of the second part:

1023 Whereas, the said Joseph E. Hayne and Laura L. Hayne stand justly indebted unto William T. Galliher in the sum of six hundred and fifty dollars money loaned and advanced, have executed and delivered their joint and several promissory note of even date herewith, drawn for said sum and payable in three years after date to the order of the said Galliher with interest until paid at the rate of ten per cent. per annum payable quarterly and being desirous to secure the punctual payment of said note when and as the same shall respectively become due and payable with all interest and costs due and accruing thereon, they therefore execute these presents.

Now therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha- granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said

party of the second part, his heirs, and assigns the following-described real estate situate in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land and premises known and distinguished as and being the northeast one-quarter part of lot thirty-one (31) in square three hundred and eighty-eight (388) being the east thirteen feet front on "E" street southwest, of said lot, by a depth of sixty-two and one-half feet together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said described real estate and premises.

To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said parties of the first part their heirs or assigns, to use and occupy the said described premises, and the rents, issues and profits thereof, to take, have, and apply, to and for their sole use and benefit until default be made in the payment of said note or any instalment of interest thereon or any proper cost, charge, commission, half commission or expense in and about the same.

And upon the full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Joseph E. Hayne and Laura L. Hayne their heirs or assigns, at their cost.

And upon this further trust, that upon default being made in the payment of said note or any instalment of interest
1024 thereon or any proper cost, charge, commission, half commission or expense in and about the same, then and at any time thereafter to sell the said described real estate and premises, at public auction, upon such terms and conditions and at such time and place and after such previous public advertisement as the said party of the second part, his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Joseph E. Hayne and Laura L. Hayne their executors, administrators or assigns.

And the said Joseph E. Hayne doth hereby agree, at his own cost, during all the time, wherein any part of the matter hereby secured

shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due and to keep the said improvements insured against fire in some responsible fire insurance company to the satisfaction of said party of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to so pay said taxes and assessments or to so insure any party secured hereby may pay said taxes and assessments or may have said improvements insured and the expenses thereof shall be a charge hereby secured and bear like interest, as the matter secured. And upon any such failure to pay said taxes and assessments, or to so insure, the said party of the second part, his heirs, may sell the said described real estate and premises, and apply the proceeds of said sale as hereinbefore directed.

And it is expressly provided, that if said property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half of the commission above provided, to be computed on the amount of the debt hereby secured, and the same is hereby secured.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JOSEPH E. HAYNE. [SEAL.]
LAURA L. HAYNE. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. M. MURRAY.
JANE H. HAMILTON.

UNITED STATES OF AMERICA, }
Beaufort County, State of S. Carolina. }

I, W. J. Whipper, a notary public in and for the county aforesaid, do hereby certify that Joseph E. Hayne and Laura L. Hayne,
1025 his wife, parties to a certain deed bearing date on the seventh day of September, A. D. 1881, and hereto annexed, personally appeared before me in the county aforesaid, the said Joseph E. Hayne and Laura L. Hayne being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Laura L. Hayne, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this 23d day of September, A. D 1881.

W. J. WHIPPER, [L. S.]
Notary Public.

STATE OF SOUTH CAROLINA, }
County of Beaufort, } *ss:*

I, S. J. Bampfield, clerk of the circuit court for Beaufort county, in the State of South Carolina, do hereby certify that Wm. J. Whip-

per, Esq., before whom the foregoing acknowledgment was made was at the date thereof a notary public, duly qualified as such.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Beaufort, this 23d day of September, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] S. J. BAMPFIELD,
Clerk Circuit Court.

(Endorsed.)

Deed of Trust.

Jos. E. Hayne and wife
to
Edwin A. McIntire, trustee.

Received for record on the 28 day of September, A. D. 1881, at 12.40 o'clock p. m., and recorded in Liber No. 985, folio 89 *et seq.*, one of the land records for the District of Columbia, and examined by—

GEO. F. SCHAYER,
Dep. Recorder.

JAN'Y, '82.

On account of failure in payment of interest the trustee is hereby authorized and directed to sell the within-described property.

ADDIE McINTIRE.

On account of continued failure in payment of interest trustee is authorized by me to sell at once.

August 7, '82.

ADDIE McINTIRE.

1026 Cut from Nat'l Republican, Aug. 18, '82.

By virtue of a deed of trust dated September 7, 1881, and recorded in Liber 985, folio 89, of the land record- for the District of Columbia, and at the request of the party secured thereby, I will sell at public auction, in front of the premises, on Monday, August 28, 1882, at 5.30 o'clock p. m., all that lot of ground in the city of Washington, D. C., known as the northeast one-quarter part of lot 31, in square 388, together with the improvements. Terms: One-fourth cash and balance in six, twelve, and eighteen months, at 6 per cent., or all cash, at option of purchaser.

E. A. McINTIRE, *Trustee.*

Sold Aug. 28, '82, to Emma Taylor for $500.

EXHIBIT A. H. No. 21.

This agreement, made this 30th day of September, A. D. 1882, witnesseth that Lucinda Freeman doth hereby rent from Edwin A. McIntire, agent, the premises situate No. 916 E street, southwest in the city of Washington, D. C., for the period of one month f-r Oct.

1, '82, and thereafter from month to month at the monthly rent or sum of nine dollars, in advance, the first payment to be made on the 1st day of October, A. D. 1882, and the subsequent payments of like snm to be made in advance on the 1st day of each and every month during the continuancy of said tenancy. Said rent to be payable as it falls due at the office of the said McIntire in the city of Washington, and no demand for said rent shall at any time be necessary for any purpose in any event. She agrees that she will not use the premises for any unlawful purpose, but will occupy the same as a dwelling, and will not sublet the house, or any part thereof, nor transfer possession thereof to any person or persons, nor carry on any business therein, without the written consent first had and obtained from the said McIntire or his assigns. She further agrees to pay all bills for gas used on or about said premises, and all bills for water rent chargeable against the house during said tenancy. She agrees to give said McIntire or his assigns at least thirty days' notice of any intention to remove from said premises, and at the expiration of her tenancy will deliver up the same in the like good order in which they now are, ordinary wear and *tare* and casualties by fire and unavoidable accident only excepted; she further agrees that if any month's rent shall not be paid when the same shall be or become due and payable as hereinbefore provided (whether demand shall have been made for the same or not), or if any portion of one month's rent be due and unpaid at any time, or if he shall in any other respect violate any of the conditions and covenants contained in this agreement, then it shall be lawful for the said McIntire to re-enter and take possession of said premises, forthwith, the said Freeman hereby expressly waiving all right or claim to a thirty days' notice, to remove from said premises, 1027 and agreeing that the summons provided for in sections 684 and 685 of the Revised Statutes of the District of Columbia may be served by affixing a copy of same upon the above-described premises, personal or other service of said summons being hereby expressly waived.

It is further understood and agreed that the covenants and agreements contained in this agreement are binding in the said Lucinda Freeman and her legal representatives, and no waiver of one breach of any covenant herein shall be construed to be a waiver of the covenant itself, or of any other breace thereof.

In witness whereof the said lessee has hereunto set her hand the day and year aforesaid.

her
LUCINDA x FREEMAN.
mark.
EDWIN A. McINTIRE, *Agent.*

Witness at signing:
FLOYD HARLESTON.

Indorsed: No. 262. Agreement of Lucinda Freeman. House No. 916 E S. W. Rent, $9.00. Due 1st of each conth in advance. First payment Oct. 1, '82.

EXHIBIT A. H. No. 22.

Mr. E. A. McIntire, Esq., trustee, to J. T. Coldwell, Dr., real-estate broker & auctioneer, No. 806 F street northwest.

1881.				
Feb'y 19.	To auctioneer's services, sale of W. ½ lot 10, sqr. 388, to W. W. Anderson, @ 525..		16	50
	To bellman.....		1	00
				17 50
Ap'l 15.	To sale S. 36, sq. 1002.....			16 50
May 16.	" " " 23, " 774...			10
'82.				
Aug. 28.	To sale S. 31, sq. 388..... ...			17
Sept. 29.	" " " 13, " 296.....			22
				$83

Rec'd p'ym't, J. T. COLDWELL, *Auct'r.*

EXHIBIT A. H. No. 23

Is a blank account book of 180 pages, about 4 inches wide by 6 inches long, bound in red. On the cover is written "1882; day book." Upon the pages of this book are pasted slips of paper cut from newspapers, being advertisements of the sale at auction of the real estate described in said advertisements, respectively, all of them having the name J. T. Coldwell, auctioneer, either at the head or foot of said advertisements. They are mostly advertisements of sales under deeds of trust, such as appear in the daily papers. It is
1028 impracticable to copy this book in the record. There is no advertisement or entry in this book of any sale of the property described in the deed of trust, Exhibit A. H. No. 20. On page 17 of this book, under date of Monday, August 21, 1882, is the advertisement of a trustee's sale, signed by P. A. Darniel, trustee. The sale is advertised to take place Monday, Aug. 21, 1882. The next extry is on page 18, under date of Tuesday, Sept. 5, 1882. Pasted on this page is the advertisement of an auction sale of desirable property located in square 537, Tuesday, Sept. 5, 1882. It is impracticable to print this book in the record.

Filed with the exhibits in this cause are three (3) bills of J. T. Coldwell, auctioneer, the 1st, dated May 24, 1882, to Vedantus B. Edwards, trustee, equity cause No. 8065, for auctioneer's services in sale of north part of lots 23 and 24, in square 944. The next is a like bill, dated July 10, 1882, to Vedantus B. Edwards, trustee, eq., No. 8065, for auctioneer's services in sale of lot 23 and south 3 feet 2 inches of lot 24, in square 944, and a like bill to Samuel Maddox, trustee, in equity, No. 8602, for auctioneer's services in sale of east 35 feet front by depth of lot 6, in square 158. All three of these are signed "Received payment, J. T. Coldwell, auctioneer."

Memoranda.

1894, December 29.—Opinion of Justice A. B. Hagner filed. See case of Pryor *vs.* McIntire, equity, No. 12761.
1894, December 31.—Motion for rehearing filed.
1895, January 7.—Petition for rehearing filed.
1895, January 8.—Rehearing ordered on subject of laches.

Decree Dismissing Bill and Amended Bills with Costs; Appeal in Open Court.

Filed March 4, 1895.

In the Supreme Court of the District of Columbia.

LAURA HAYNE *et al.* *vs.* EDWIN A. MCINTIRE. } Equity. No. 13177.

This cause came on to be heard on the bill, amended bills, answers, exhibits, testimony, and all other the proceedings, *and*, being submitted to the court after argument by counsel for the respetive parties and after the re-argument of the same, were by the court read and considered.

It is thereupon this 4th day of March, 1895, by the court and the authority thereof adjudged, ordered, and decreed that the said bill and amended bills be, and the same are hereby, dismissed with costs, for which execution shall issue as at law.

A. B. HAGNER,
Associate Justice.

1029 From the above decree the complainants take an appeal in open court, which is allowed.

A. B. HAGNER.

March 4th, 1895.

Memoranda.

1895, March 4.—Opinion of Justice A. B. Hagner on re-argument filed. See case of Pryor *vs.* McIntire *et al.*, equity, No. 12761.

Order for Citation. Filed March 6, 1895.

In the Supreme Court of the District of Columbia, the 6 Day of March, 1895.

HAYNE *et ux.* *vs.* E. A. MCINTIRE. } Equity. No. 13177.

The clerk of said court will issue a citation to the defendant in the above-entitled cause.

FRANKLIN H. MACKEY,
Sol. for Pl'ff.

In the Supreme Court of the District of Columbia.

LAURA HAYNE & JOSEPH E. HAYNE *vs.* EDWIN A. MCINTIRE. } No. 13177. In Equity.

The President of the United States to Edwin A. McIntire, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 4th day of March, 1895, wherein Laura Hayne & Joseph E. Hayne are appellant- and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant- should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 8 day of March, 1895.

S. S. HENKLE,
Attorney for Appellees.

* * * * * * *

1030 In the Court of Appeals of the District of Columbia, May 15, 1895.

JOSEPH HAYNE *et ux.*, Appellants, *vs.* E. A. MCINTIRE *et al.*, Appellees. } No. 469.

S. S. Henkle, sol. for appellees:

Take notice that the appellants hereby designate the following portions of the transcript of the record in the above case to be printed as necessary to the hearing of the cause, to wit:

All of the transcript except so much thereof as is included in red-pencil brackets in said transcript.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
W. W. BOARMAN,
Sol'rs for Appellants.

(Endorsed:) Court of Appeals D. C., April term, 1895. No. 469. Laura Hayne *et al.*, appellants, *vs.* Edwin A. McIntire. Designation by appellants of parts of record to be printed. Court of Appeals, District of Columbia. Filed May 15, 1895. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 469. Laura Hayne & Joseph E. Hayne, appellants, *vs.* Edwin A. McIntire. Court of Appeals, District of Columbia. Filed May 14, 1895. Robert Willett, clerk.

1031 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing are true copies of the transcripts of records in the following cases, viz:

ELIZABETH BROWN, Appellant,
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE, Pages 1 to 157, Inclusive. } No. 466.

ANNIE M. ACKERMANN, Appellant,
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE, Pages 1 to 99, Inclusive. } No. 467.

CATHARINE SOUTHEY, MARGARET COLE, and MICHAEL COHAN, Appellants,
vs.
EDWIN A. MCINTIRE and MARTHA MCINTIRE, Pages 1 to 98, Inclusive, } No. 468.

and

LAURA HAYNE and JOSEPH E. HAYNE, Appellants,
vs.
EDWIN A. MCINTIRE, Pages 1 to 105, Inclusive. } No. 469.

April term, 1895, as the same remain upon the files of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 15th day of January, A. D. 1898.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,586. Supreme Court U. S., October term, 1897. Term No. 373. Edwin A. McIntire *et al.*, appellants, *vs.* Mary C. Pryor. Addition to record pursuant to order of November 29, 1897. Filed January 24, 1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

EDWIN A. McINTIRE AND MARTHA McINTIRE,
APPELLANTS,
v.
MARY C. PRYOR.
No. 109.

Appeal from the Court of Appeals of the District of Columbia.

BRIEF FOR APPELLANTS.

1. STATEMENT OF THE CASE.

The complainant in this case, being the owner of parts of Lots 21 and 22, in Square 569, situated on F street, between First and Second streets, northwest, in this city (being at that time a vacant piece of ground, with the exception of a small shed in the rear), did, together with her husband, in May, 1880, convey the same to Edwin A. McIntire to secure one Hartwell Jenison in the sum of $450 for money advanced by said Jenison, which was

represented by a note made by the complainant, bearing even date with the trust and payable in one year after date, with interest at the rate of eight per cent. per annum until paid, interest payable quarterly. Default being made in the payment of the note, the property was regularly advertised for sale under the deed of trust, and after one postponement on account of the weather, was sold on the 17th day of June, 1881, and bought in by the said Hartwell Jenison for the sum of $839.19, the difference between $450, the amount of the Jenison note, and $839.19, the amount for which the property was sold, being the amount of taxes that had accrued on the property, together with the expenses and commissions attending the sale. Previous to this trust of $450, a former deed of trust had been given by the same parties, securing Jenison in the sum of $500, of which $50 was paid, and a new trust given for $450, which is the one above mentioned. Thereafter, on the 29th day of June, 1881, Jenison, not being willing to pay the difference between the amount of his note and what the property brought, gave a new note to one Emma Taylor for the sum of $425, and secured the same by a deed of trust on the same property, the note being payable one year after date, with interest at the rate of eight per cent. per annum. Thereafter the said Jenison, wishing to get rid of the property and be relieved of the obligation of the note, conveyed the property to Emma Taylor, she surrendering the $425 note. Subsequently, and in May, 1884, Emma Taylor conveyed the property to Martha McIntire. It being ascertained that there was some defect in the deed from Jenison to Taylor, Jenison subsequently, on the 27th day of September, 1887, made a quitclaim deed of his interest in the property to Martha McIntire. Martha McIntire, in October, 1886,

built four houses upon the property, two fronting on F street, and two in the rear facing an alley, which improvements gave value to the property, and she has had the use and enjoyment of the property, thinking herself to be the lawful owner thereof, ever since.

Claims Made by Complainant's Bill.

The complainant, on the 21st day of October, 1890, being nearly *nine years and four months* after the sale had been made under the deed of trust given by her, filed a bill in equity in which she claimed that before the property had been offered for sale under the said deed of trust, the defendant E. A. McIntire had represented to her husband, Thomas Pryor, that the sale would be only a matter of form, and Pryor could buy it in. That the sale was made without the knowledge and consent of Mr. Jenison, the holder of the note secured by the deed of trust. That the husband of complainant became the purchaser of the property at the trustee's sale, for the sum of $700. That they were not disturbed in the property for some time, when Edwin A. McIntire called on them and told them they could pay rent for the property to him, and it would be applied to the payment of the principal of the debt, and that accordingly they paid rent for some time at the rate of six dollars per month. That complainant has only recently discovered that the sale was made without the knowledge and consent of the holder of the note secured by the said deed of trust, and that a deed was made to Hartwell Jenison, and that the said deed to him was made without his knowledge and consent. That this deed was held by said McIntire from record for some fraudulent purpose, and that afterwards McIntire put a deed on record from the said Jenison to Emma Tay-

lor, and thereafter put another deed on record from the said Emma Taylor to his sister, Martha McIntire. That the said Emma Taylor was a fictitious person, and that the consideration mentioned in the deed from Emma Taylor to Martha McIntire was fictitious. That subsequently, by fraudulent representations, the said Edwin A. McIntire got the said Jenison to execute a quitclaim deed to Emma Taylor.

Subsequently, an amended bill was filed by the complainant, making the same accusations as those in the original bill, and charging further that the sale made by McIntire under the Jenison deed of trust was made in McIntire's own interest, with the fraudulent intent to get possession of the property. That the $425 note given by Jenison and secured by deed of trust given by him was fictitious and manufactured by McIntire to the same fraudulent end. That the deed to Taylor was but a cloak to cover up his fraud, and that, Emma Taylor being a fictitious person, complainant charges that the deed to her was void, and prays that the sale under the deed of trust at which the property was knocked down to Jenison be set aside, and that an account be taken of what is due under the $450 deed of trust, and upon payment of the money found to be due, which she tenders herself ready to pay, that a decree of the court be passed declaring the complainant seized of her former estate in the property, and that the trustees, Martha and Edwin A. McIntire, be called to account for all rents, issues, and profits received by them on account of said real estate since this foreclosure sale.

The answer of Edwin A. McIntire denies any and all allegations of fraud or deceit or fraudulent motives or practices, and avers that the sale was *bona fide* in all respects, and that he had no interest whatever in the prop-

erty. That it belonged to his sister, Martha McIntire, who bought the property in the regular course of business transactions.

Hartwell Jenison, who was made a party defendant, also answered the bill and amended bill, and states that he directed the sale to be made and the property to be bought in for him if necessary for his protection, and that he made the deed to Emma Taylor and also the quit-claim deed to Martha McIntire. That he knew nothing whatever of any fraud or unfair dealings on the part of Edwin A. McIntire.

The defendant Martha McIntire, in her answer, denies that she participated in or had anything to do with any fraudulent scheme by which to get possession of the property, or that she had any knowledge of any fraud being perpetrated or any misbehavior on the part of the defendant Edwin A. McIntire, but sets up that she was a true and *bona fide* purchaser, and was an innocent holder thereof.

Upon a full and careful hearing of the case upon the bill, answers, and proofs, and a rehearing thereafter allowed and had, the court sitting in Special Term passed a decree dismissing the bill of complaint. From this decree the complainant appealed, and upon the case being heard in the Court of Appeals it passed a decree reversing the decree of the court below ; declared the sale under the Jenison trust to be void, and directed the case to go to an Auditor for a statement of the account as to the amount due on the Jenison note, and that the defendants Martha and Edwin A. McIntire account for all the rents, issues, and profits on the property since the time of the sale under the said deed of trust, and that upon the coming in of said report a final decree should be passed annulling each and all of the several trusts, deeds, and

conveyances that cloud the title to said premises, and awarding possession thereof to complainant. It further provided that upon paying whatever sum might be found to be actually due, first to said Jenison and then to the defendant Martha McIntire, and all costs to be taxed against the defendants, a decree shall be made setting aside the sale made under the said Jenison trust.

The Auditor subsequently filed his report, containing a statement of account, and finding that, after allowing $350 on account of the Jenison note and $3,300 for construction of the improvements, and after charging the defendants Edwin A. and Martha McIntire with the reasonable value of rents and revenues of the property, or what should have been received by them on the property, from the time of the sale thereof under the Jenison trust, there was an indebtedness on the part of Edwin A. and Martha McIntire of $1,664.93. To this report the defendants Edwin A. McIntire and Martha McIntire separately excepted, Edwin A. McIntire excepting to the Auditor's finding them chargeable with the rents and profits of the improvements that were made on the property by Martha McIntire after she purchased the same. The defendant Martha McIntire excepted to that part of the report which charges her or the defendant E. A. McIntire with the rents and profits of the property as improved by her. She also excepted to that part which charges her or the defendant Edwin A. McIntire with the rents received from the improvements made upon the property after it was deeded to her. She further excepted to that part of the report which does not allow her credit for the $425 note, with interest from June 29, 1881.

The complainant excepted to the findings of the Auditor in allowing the cost of the improvements made on the property by Martha McIntire.

Upon the hearing of these exceptions at the Special Term, the Auditor's report was affirmed, and it was further decreed that the complainant recover from the defendants the sum of $1,664.93, with interest from the 3d day of July, 1896, and that the deeds be vacated and set aside. It was decreed that the deed of trust from Mary Pryor and her husband to Edwin A. McIntire, securing Hartwell Jenison, under which the sale was made; the unrecorded deed from Martha McIntire to Mary C. Pryor; the quitclaim deed from Hartwell Jenison and wife to Martha McIntire; the deed in fee from Hartwell Jenison and wife to Emma Taylor; the deed of trust from Hartwell Jenison and wife to Edwin A. McIntire securing the $425 note, and the deed from Edwin A. McIntire, trustee, to Hartwell Jenison, which was the deed from him as trustee after he sold the property to Jenison under the deed of trust from Pryor to him securing Jenison, and the deed from Emma Taylor to Martha McIntire, should all be vacated and annulled. And further that the defendants should deliver forthwith possession of the said property to the complainant. From this decree the defendants appealed to the Court of Appeals, and the complainant also appealed from so much of the decree as overruled her exception. Upon a hearing, the Court of Appeals passed a decree affirming the decree of the court below. From that decree the defendants Edwin A. and Martha McIntire have appealed to this court.

2. SPECIFICATION OF ERRORS.

1. The court below erred in not dismissing the complainant's bill and amended bill of complaint.

2. The court below erred in passing a decree annulling the sale made under the deed of trust to secure Hartwell

Jenison in the sum of $450, and in setting aside the various deeds of conveyance under which the defendant Martha McIntire derives title to the property in question.

3. The court below erred in annulling and vacating the deed of trust from Mary C. Pryor and Thomas Pryor to Edwin A. McIntire, recorded in Liber 91, folio 499, of the land records of the District of Columbia, and also the other deeds of trust and deeds affecting or clouding the title of complainant to the property in question.

4. The court below erred in decreeing that the complainant recover of the defendants the sum of $1,664.93, with interest from the 1st day of July, 1896.

5. The court below erred in decreeing that interest should be paid by Mary C. Pryor on the $350 only from the date of the decree passed by the court at the Special Term on July 16, 1896.

6. The court below erred in decreeing that the defendant should forthwith deliver possession of the property in question to the complainant.

7. The court below erred in not finding that the defendant Martha McIntire was an innocent purchaser of the property without notice.

8. The court below erred in not dismissing the bill on account of laches on the part of the complainant.

9. The court below erred in not dismissing the bill for want of equity.

3. BRIEF OF THE ARGUMENT.

I.

Before entering into the discussion of the testimony, it will be observed that the bill of complaint admits the

execution and delivery of the deed of trust securing Hartwell Jenison, and under which the property was sold, and the validity of the consideration mentioned in said trust. It will further be noted that no complaint is made as to the advertisement of the property for sale under the terms contained in the trust, or that the property was sold for less than its value. The most that can be gotten out of the bill of complaint is that Edwin A. McIntire, who had nothing whatever to do with the original transactions between Jenison and the Pryors out of which arose the giving of the deed of trust for $450, and who was not known by Jenison at that time (399, 403), told complainant's husband that the sale would only be a matter of form, and that he could buy it in, and that it was knocked down to her husband at the sale for $700, and that, sometime after that, he said they could pay rent and it would go towards paying off the debt, and that they, acting upon that statement, did pay some rent at the rate of $6 per month. This is the ground upon which the complainant comes into a court of equity, after a lapse of nine years and four months, and asks for the sale to be set aside, after waiting until substantial value had been given to the premises by improvements by the purchaser, and until after both the auctioneer who sold the property, and the Justice who took the acknowledgment of the important deed in the transaction, had died. Supposing, however, for the sake of argument, we admit that there are proper grounds for complaint pleaded in the bill, and that there were no laches on the part of the complainant in bringing this suit, what does the proof disclose to warrant the passing of the decree made by the court below?

(a) *The charge that Edwin A. McIntire said Pryor could buy in the property.*

As to this charge, we have only the naked statement of complainant that she and her husband saw the autioneer's flag out for the sale, but did not know what it meant. That Mr. McIntire came there that day and said "the trustee was pushing him," and he was compelled to have a sale, but that he would allow the husband to bid it in, and would knock it down to him, and that she supposed it might have been a month when he came back and said Jenison was pushing him, but that he would let them pay $6 a month as rent until the debt was paid and then convey the property back (23). This story is so vague and improbable that it might be passed without comment, but as it is the connecting link in the chain of circumstances going to make up the claim upon which the bill was filed, we prefer to call the attention of the court to a few suggestions before proceeding to the other charges. In the first place, this averment is wholly denied in the several answers of the defendant Edwin A. McIntire, and also emphatically denied in his testimony. At page 195 his testimony on this point is as follows:

"Q. I want to know whether before the sale he (Pryor) had made any arrangements with you, or proposed any arrangements with you, by which he should become the purchaser at the sale?—A. He never said anything to me about it.

"Q. Upon terms that you and he were thereafter to agree upon?—A. He never intimated anything of the kind to me. I am too well acquainted with my duties as trustee to listen to anything of the kind.

"Q. Did you or not have authority to make such terms?—A. I had no authority to make any such terms.

"Q. Were you anything else than a bare, naked trustee with the authority simply of a naked trustee at that time?—A. That is all.

"Q. You had no power to make terms with him?—A. Not the slightest.

"Q. Except those advertised and named in the deed of trust?—A. No, sir.

"Q. And you say you did not?—A. I did not.

"Q. And there was no conversation between you relating to it?—A. None at all. I never spoke to Mr. Pryor in Mrs. Pryor's presence. He universally came to my office. I never saw her at my office.

"Q. Did they take the lease upon the property after it was sold?—A. Not after the sale to Mr. Jenison. After they had made the conveyance to my sister, Martha McIntire, for the consideration of $5, she assuming the incumbrance, one of the conditions was that she should lease the property to Thomas Pryor, so that he could carry on the coal and wood business."

The lease is in writing, and is Exhibit A. H. No. 16, on page 438. This agreement was made by the consent and approval of Martha McIntire (196). There was no other terms than those embraced in the paper (196). Again he says:

"There was no such understanding as that at all; on the contrary, the deed of the property to my sister Martha was made to her before she authorized this agreement" (196). "He had parted with the property, and then she turned around and leased it to him for a year so that he could carry on his coal and wood business. He feared that if the property was sold under the deed of trust, some new party would get it and put him out of the business."

Again (187, 188), Mr. McIntire testified that about the 3d of May, 1881, Thomas Pryor came to him and said he could not pay the $450 note, "and asked me whether I could get a purchaser of the property who would take it off his hands and assume the encumbrance and taxes." Thereupon he wrote to his sister Martha and suggested that it might be a good chance for her to make an investment. The deed was made to her, the consideration being

$5, she to assume the incumbrance and give Pryor a lease of the property for a year. Within a very short time Mr. McIntire found, upon examination, that the taxes instead of being only $30, as represented to him, were ten times that amount. He reported this fact to his sister, she declined to pay that amount of taxes, and the property went to a sale.

It further appears from the evidence of the defendants that Mr. E. A. McIntire was authorized to make the sale directed by Mr. Jenison, the holder of the note, and to bid the property in, to protect him (188). Exhibit A. H. No. 5 is a letter to E. A. McIntire from Mr. Jenison, and signed by him, directing the former to bid for him at the sale an amount sufficient to cover the loan, taxes and expenses, and is dated June 9, 1881 (430). Mr. Jenison also testifies (p. 43) on that point as follows:

"Q. I show you the deed of trust from the Pryors to Edwin A. McIntire, Exhibit A. H. No. 4, and call your attention to the endorsement on the back of the paper, which reads as follows: 'Failure having been made to pay the note secured by the within deed of trust, the trustee is hereby authorized to advertise and sell the property at public auction, Wash'n, D. C., May 25, '81,' and purporting to be signed 'H. Jenison.' Will you look at that and say whether that is your signature?—A. Yes, sir.

"Q. You did authorize it?—A. Yes, sir.

"Q. Please look at the paper now handed you [which was Exhibit 5, being the authority to bid in the property] and state if you ever saw that before?—A. That is my signature, and of course I saw the paper when I signed it."

This witness, it is to be observed, is one of the complainant's witnesses, whose answer to the original bill was prepared by counsel for complainant (42, 43), and with

whom counsel for complainant had an understanding that if Jenison should, by this proceeding, get the full value for his note, he was to be satisfied with $350, and the complainant's counsel take the difference. Jenison was called, as we suppose, to maintain the allegation in the bill that he never authorized the sale and that the property was sold to him without his knowledge or consent, and that he knew nothing about the deeds from him to Emma Taylor and Martha McIntire.

Now, need we go further into the discussion of this averment in the bill—might we not rather put this aside, calling the attention of the court to the absurdity of the proposition on its face? Would any one suppose that such an arrangement as stated by Mrs. Pryor, would, for a moment, be considered by any one, howsoever ignorant of business matters, much less by a person engaged in the real estate business? Under such an arrangement the debt could not have been paid off in less than ten years, and surely McIntire would not have consented to that, even if he possessed the authority to do so, which he did not, as we have shown. And, again, it is wholly inconsistent with all the circumstances, such as the giving of the deed by the Pryors to Martha McIntire, the leasing of the property under a written agreement, with no such provision in it, the notice to the trustee to sell, the authority taken by McIntire to bid the property in for Jenison if necessary, and the fact that it was sold at the sale to Jenison, as shown by the auctioneer's bill and receipt.

(b) *As to the property being knocked down to Thomas Pryor for* $700.

The next fraudulent act alleged is that the property at the sale was knocked down to Thomas Pryor for $700. On this point the complainant testified that she heard the auctioneer knock it down for $750 to her husband,

Pryor (23). But it appeared on her cross-examination that when the sale took place she was in her house, at the front window, which was across the alley and was about 130 feet from the front of the lot where the sale took place. Complainants also called one James Ragan to testify on this point; he thought it was knocked down to Thomas Pryor (20). On cross-examination (21) he testified as follows: "Being at the sale, I have a faint recollection that the property was knocked down to Mr. Pryor." "Q. Did you hear it knocked down?—A. I probably did, but I don't remember." Thomas P. Jacobs was another witness examined on this point. He testified that he was coming along, just going home, and had driven his horse in the yard on the opposite side, and as he came out on the pavement he saw Jim Ragan coming away from the sale there; "I asked him who bought it, and he said that Pryor bought it in" (31). This statement was of course incompetent and was objected to at the time. Two other witnesses were called as to this point, Albert Johnson and Robert Holliday. Albert Johnson testified that he was at the sale; that the property was knocked down to Thomas Pryor (32). On cross-examination he stated that he did not know who the auctioneer was, or what kind of a looking man he was; did not know whether Mr. McIntire was there or not; did not know who bid on the property; did not hear Pryor say anything; did not hear him bid (33). Robert Holliday testifies that he remembers the sale, and he was asked: "Q. Do you remember to whom the property was knocked down?—A. Well, it was struck off to Pryor. I was standing right at the gate" (34). On cross-examination he stated that he did not know who called Pryor's name. Both of the last witnesses signed their depositions by mark. This was all the testimony offered to show that the property was knocked down to Pryor.

To meet this evidence we have the testimony of Amos Fouche and James F. Boiseau, who examined the premises with a view of ascertaining if a person standing in Mary C. Pryor's house could see what was going on in front of the property when it was sold; this was to meet Mary C. Pryor's testimony on this point. They testified that they did not think any one could see or hear what was going on (183, 201). Fouche also testified that the diagram of the premises, which is Exhibit A. H. No. 24 (445), is as correct a diagram of the premises as you can get, unless you measure it and lay it off by rule (184), and from the diagram it will appear perfectly plain, that she could not see what was going on at the sale. Edwin A. McIntire also testified on this point, and says the property was not knocked down to Pryor, but that he bid it in as directed by Jenison, to which fact we have already referred.

But the strongest evidence offered by either side on this point was the statement made by the auctioneer himself. Although we are deprived by death of his oral testimony, we have his written statement in the shape of a bill and receipt made in his own handwriting, as proven by Richard Pettit, who was in the office with the auctioneer, Mr. Coldwell, and knew him from 1874 until his death (159, 160, 161, 162). See also E. A. McIntire's testimony (192). The bill and receipt are Exhibit A. H. No. 21 (page 444), being as follows:

"Mr. Edwin A. McIntire, Trustee, to J. T. Coldwell, Dr., Real Estate Broker and Auctioneer, No. 806 F Street Northwest. Removed to 575 Seventh Street. 1881. June 17. To Auctioneer's services, sale of part Lots 21 & 22, Sq. 569, to H. Jenison, at 31 c. per sq. ft. . . . . $25.00."

"Rec'd pymt.,

"J. T. COLDWELL, Auc."

This proof, we submit, removes all doubt that the property was not knocked down to Pryor, and, on the contrary, shows that it was knocked down to Jenison.

This being so, what becomes of the complainant's case; does it not necessarily fali with these averments? For the sale being regular, and Jenison becoming the purchaser, all interest that Mrs. Pryor had in the property passed with the sale, and she no longer had any concern in it; and it would make no difference to her what happened afterwards with respect thereto.

But suppose this is not so, what then? It is further claimed that a deed was gotten by fraudulent acts of E. A. McIntire from Jenison to Emma Taylor, and also a quitclaim deed later on from Jenison to Martha McIntire, which last deed was not explained to Jenison, and further that Emma Taylor was a fictitious person. As to the first of these charges,—that, by fraud, Jenison was induced to execute a deed to Emma Taylor, and later on a quitclaim to Martha McIntire,—there was no proof offered by any witnesses on the part of the complainant, but they intend to rely on the evidence of Jenison and E. A. McIntire and circumstances connected with the recording of the papers. Jenison, in response to the question, "When the Emma Taylor note fell due for $425, then what was done?" put by Mr. Mackey, answered, "Then that deed of conveyance was made to her, for the reason that I had no means of redeeming the property"(38). Again, he was asked, "What I want to get at is, what was stated to you by Mr. McIntire, if anything, to induce you to make the conveyance to Emma Taylor, instead of taking up the note for $425?" and answered as follows: "Well, perhaps it was more on my own part in saying that I did not wish to carry the obligation any further. If the property could be sold to cover this additional expense, then I did not wish to carry it."

Again, we have in that connection a letter from Jenison to E. A. McIntire, being Exhibit A. H. No. 6 (430), which is as follows:

"TREASURY DEPARTMENT,
"REGISTER'S OFFICE, *Ap'l* 13, 1882.

"E. A. MCINTIRE.

"D'R SIR: I take it for granted that you have not effected any trade or exchange for my lot and presume there is not much prospect of making a sale before maturity of the trust deed. I do not think there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on; besides, I am not in a position to carry it. I shall doubtless have to submit to a sacrifice by forced sale, but may realize a little over the incumbrance should there be any competition in bidders. Unless you think you can do better I wish you would advertise and do the best you can in its disposition."

He concludes by asking Mr. McIntire to call on him, and signs the letter, "Yours truly, H. Jenison."

The same witness, when questioned as to the quitclaim deed,—which was not to Emma Taylor, as claimed by complainant, but to Martha McIntire,—testified that he gave the quitclaim because there was a defect in the acknowledgment of his deed to Emma Taylor (39). He further testified that McIntire paid him $100, and that he did not remember what the explanation was for giving the $100 (39). Mr. McIntire testified that he gave Jenison the $100 because he would not execute the quitclaim without he was paid that (198). And in that connection he testified how the defect came to be found out, and how he came to pay the $100 (198). From this testimony we take it to be established that these averments as to the "Jenison deed to Emma Taylor" (as charged, but to Martha McIntire in fact) being made through fraud on

the part of E. A. McIntire are wholly without foundation in fact and are in the same line with the averments as to Mr. McIntire agreeing that Pryor should bid in the property, and that it was knocked down to Pryor.

This leaves us to dispose of only one more alleged fraudulent act complained of—that is to say, did Mr. McIntire use a fictitious person, called Emma Taylor, to aid him in the alleged scheme by which it is charged he got the property?

To maintain this allegation one Annie L. Galliher was examined by complainant's counsel, and the substance of her testimony on this point is that she knew Emma T. McIntire; that the witness was a niece of Emma T. McIntire, and that she "understood" that T stood for Taylor, and that she was called Emma Taylor in the witness's father's family (64); that she "thought" she knew Emma T. McIntire's handwriting, and that the writing on cards 5, 6, 7, 8, 9, 10, and 11, filed with her testimony in the case of William McIntire *v.* Edwin McIntire, looked, she thought, like Emma T. McIntire's handwriting, and that the signature "Emma Taylor" to the deed from Emma Taylor to Joseph Forrest looked like the same handwriting (66). This is the only testimony given by any witness on the part of complainant in this case on this point, except another witness, Joseph Forrest, whose testimony was *against* complainant's contention (56). He testified, when being examined by Mr. Mackey, that he had seen Emma Taylor; that she was pointed out to him in Mr. McIntire's office by Mr. Harleston (57). We do not think there were any witnesses in any of the other cases examined as to this point, as it was expressly stated in this case by the counsel for complainant that he would put in all his testimony as to Emma Taylor in this case (269).

There was, however, a mass of irrelevant and incompe-

tent testimony offered by counsel for complainant which, he claims, tends to establish this averment. That testimony consists of a lot of deeds from Emma Taylor to Martha McIntire and deeds from Martha McIntire, and other people with whom Edwin A. McIntire had some connection, to Emma Taylor; and he also produced a witness from one of the Title Companies to show that he had made an examination with the view of ascertaining what deeds had been executed to and from Emma Taylor, and offered in evidence an abstract of said deeds. Another witness testified as to some photographs of signatures of Emma Taylor to deeds that were offered in evidence in equity cause numbered 10,745, McIntire *v.* McIntire, and equity cause numbered 12,761, Pryor *v.* McIntire, and in the case of Brown *v.* McIntire, and also photographs of signatures of Emma T. McIntire and the card-boards testified to by the witness Annie L. Galliher, which photographs were offered in evidence. Counsel for defendants objected to them, for even if signatures were admissible, these were not, for they were but mere copies (100) and were not competent.

Wm. MacLennan was one other witness, who was put upon the stand as an expert on handwriting, and shown signatures of Emma Taylor and Emma T. McIntire to papers not in this case, for the purpose of comparison, and calling forth testimony to show that, in his opinion, the person who wrote "Emma Taylor" on the cards and to some deeds was the same person who wrote "Emma T. McIntire." All of this was objected to as incompetent (87 to 95, inclusive).

The witness Annie L. Galliher, who is the source from which the theory of counsel for complainant was derived that Emma Taylor was the same person as Emma T. McIntire, was embittered against Edwin A. McIntire, and

may be characterized as an exceedingly hostile witness. Her hatred to the McIntires commenced just as soon as she learned, through Edwin A. McIntire, that neither she nor her family would get anything under the will of her uncle, David McIntire, which has been before this court in a noted case. Since then, she has been very active in promoting and taking part as a witness in the various cases brought against Edwin McIntire, though before that she was quite friendly (217, 218). She admits on cross-examination her hostility (68). She testified as to the signature of Emma T. McIntire, but it appears that the signatures on the card-boards which were shown to her and which she said were Emma T. McIntire's signature were not written by Emma T. McIntire, and were not seen by Emma T. McIntire, but were written by Judge Helmick, or caused to be written by him, for the purpose of showing that she could not tell Emma T. McIntire's signature (218, 219, and testimony of Gen. Henkle, 704).

The greater part, if not all the evidence of MacLennan, the alleged expert, was clearly incompetent. This evidence was duly objected to at the time it was offered, and the objections noted upon the record. Photographs were produced also. Photographs at best are but copies. Parties to suits cannot be permitted to manufacture evidence in their own favor, and it is well known that by distortion and other means a skilled photographer can make nearly any kind of a copy which may be desired by the person employing him. If photographic copies may be made for use in any case it seems but fair that they should be made with the co-operation of all the parties to the cause. To permit one of the parties to manufacture them for use as evidence without the knowledge or consent of the other, would be obviously unfair and unjust.

The writings brought from the files of the Register of

Wills were not competent evidence, and should not be considered on the hearing of this case. They were not in evidence in the case for any purpose, nor were they admitted to be genuine.

The rule on this subject is well settled.

Moore *v.* U. S., 91 U. S. 270.
Williams *v.* Conger, 125 U. S. 397.
Hickory *v.* U. S., 151 U. S. 303.
Keyser *v.* Pickrell, 4 App. D. C. 198.

We do not think it necessary to enter into a further discussion as to the bearing and effect of this class of testimony, which was offered in the attempt to show that Emma Taylor did not exist. This leaves us to point out the evidence submitted on the part of the defendants to meet the charges and insinuations gathered from the evidence for complainant. But first it may be proper to refer to the testimony of two or three other witnesses called by the complainant. One was Thomas Darneille, a clerk in the Tax Office, who was called to show by whom the taxes on the property assessed in the names of Emma Taylor and Martha McIntire were paid, and he testified (62) that the taxes on the Emma Taylor property, on Lots 156 and 157, Square 615, and on Lot 21, Square 992, etc., for part of years 1890 and 1891, were paid partly by check of E. A. McIntire and the other part in cash, but the books did not show by whom, and substantially the same as to the Martha McIntire property, as to the years 1889 and 1890. This testimony appearing to counsel utterly immaterial, there was no cross-examination. Another witness was George Swartzell. He testified as to a deed of certain property having been made to him by E. A. McIntire, that he did not pay anything for it, and that afterwards he conveyed it, at McIntire's

request, to Emma Taylor. He does not remember ever seeing Emma Taylor (61). On cross-examination it appears that he, Mr. Coldwell and Mr. McIntire, at the time this property was deeded to him, were in the same office (71). He further testified (72) that his interest was so little in the property that he paid but little attention to it; that he first made a deed of it to Martha McIntire, and that was cancelled before it was recorded, and another deed made (which presumably was to Emma Taylor).

The history of this transaction is fully explained by Mr. McIntire (216). And as the entire transaction seems to us to have so little bearing upon this cause, we pass it without further comment.

Floyd Harleston was a clerk in McIntire's office; knows Emma T. and Martha McIntire; did not recollect meeting Emma Taylor. On cross-examination he admits his signature as a witness to a deed signed by Emma Taylor, and that he must have met her as he signed as a witness; that he has no doubt that he met her; that it could not have been Emma T. McIntire, as he knew her (76). As to this witness, more will be said later on, in discussing defendants' testimony on this point.

The remaining witness was Jacob Eller, who testified that he had signed a deed to Emma Taylor, but did not see or know Emma Taylor; that he had borrowed $350 from Edwin A. McIntire and given a deed of trust on the property; that the money was not given to him, but Mr. McIntire said he would fix the house up out of the money; that shortly afterwards the witness was taken sick, and after he was able he looked at the house and very little was done to it. Afterwards the interest became due and he could not pay it, and told McIntire he could do what he pleased with the property. He asked if

witness meant that he did not care about the property, and afterwards he came back with a paper which witness signed, and afterwards found out was a deed (81). Suit was brought to recover this property (80). On cross-examination it came out unwillingly that Mr. Mackey sent for Eller and brought the suit; that Eller did not even pay the costs of suit (82, 83). The testimony of this witness as to his getting the money for which he gave the deed of trust is fully met by the testimony of Mr. McIntire (220, 221), and from that it appears that Eller came to him with an attorney of the Bar of the Supreme Court of the District of Columbia, Mr. Bigelow, who is still practising before the court, and the money was borrowed for the purpose of paying off a prior deed of trust and some bills that Eller owed, and the balance expended in repairs on the property. That the money was paid principally to Mr. Bigelow, who represented the holder of the prior trust, and the rest paid out on order of Mr. and Mrs. Eller (221, 222). Mr. Bigelow was not called by the other side to contradict this testimony, so we must infer that Mr. McIntire's story of the transaction is true.

Emma Taylor not a Myth.

The appellants have the evidence of at least six living witnesses, in addition to their own, as to the existence of Emma Taylor, two of them being witnesses called by the complainant.

The first was Joseph Forrest, a witness for complainant. His testimony has been before alluded to in presenting to the court the complainant's evidence. He testified that Emma Taylor was pointed out to him by a clerk named Harleston in McIntire's office (57).

Floyd Harleston, another witness called by the com-

plainant, testified to his signature as witness to a deed executed by Emma Taylor and acknowledged before Justice Helmick; that he and Justice Helmick were acquainted with Emma T. McIntire, and that it was not Emma T. McIntire who signed the name Emma Taylor to the deed; that it must have been Emma Taylor or he would not have signed as a witness (75, 76). He had frequently heard the name of Emma Taylor mentioned in connection with business while he was in the office of E. A. McIntire (78). He further testified that whilst he could not say that he remembered the presence of Justice Helmick and Mr. Peugh when the deed from Emma Taylor and Barbara Brown to Martha McIntire was acknowledged, yet he would not have signed as a witness if they had not been present (95, 96). That he was familiar with the signature of Justice Helmick and that was his signature to the acknowledgment of that deed (96). He further testified that he knew Emma T. McIntire and it was not she who wrote the name of Emma Taylor to that deed, and also that Justice Helmick knew Emma T. McIntire (96, 97).

John Taylor, a witness for defendants, kept an ice-cream saloon on "G" street, and knew Emma Taylor. She came there to get cream and he heard her called by a lady who was with her Emma Taylor (144). A lady named Miss Forsythe used to come with her. Miss Forsythe's father kept dining-rooms on "F" street.

Charles Schaefer, another witness, lived in Washington from 1853 to 1880, was engaged in real estate business, and made his headquarters at the office of E. A. McIntire. He met a lady at McIntire's office and was told by some of the clerks it was Emma Taylor; she came in the office quite frequently whilst he was there (153). Emma T. McIntire was pointed out to witness, and he was asked if she was the lady, and he said no (153).

Elmer E. Atkinson was with E. A. McIntire; was with him when he opened his office and remained with him until the latter part of 1880. He remembered that a lady used to come there named Emma Taylor (154, 155).

Harriet M. Harris had a studio on F street in the neighborhood of McIntire's office, and was in his office quite frequently. She met a lady named Emma Taylor at Mrs. Forsythe's dining-rooms on F street, where she took her meals (335). On cross-examination she said she did not hear her first name called. She was introduced to her as Miss Taylor (338).

Samuel A. Peugh, it is important to notice, was first called as a witness by counsel for complainant in the case of Brown *v.* McIntire; and when shown the deed from Barbara Brown and Emma Taylor to Martha McIntire, and asked if he knew such a person as Emma Taylor, the witness answered that he did not (596). He was further asked as to his signature as a witness to the deed, and he testified that he usually wrote his name "S. A. Peugh" (597). On cross-examination he testified that he and Justice Helmick were very intimate friends, and that he was very familiar with his handwriting, and that the signatures of Justice Helmick to the deed both as attesting witness and as the acknowledging officer were his signatures (598, 599). After being cross-examined as to his own signature, the witness asked to be allowed to consult his signature to some old deeds. This witness, it will be observed from his testimony on cross-examination, had been talked to by counsel for complainant before he was examined as a witness, and told that the genuineness of his signature was in question, and counsel for complainant undertook to point out to him a dissimilarity of that signature and his true signature (599). He was subsequently called by defendants in the Brown case, and tes-

tified that he had made an examination, and that his mind was sure that that was his signature as a witness to the Brown deed (605), and that it was Justice Helmick's signature as attesting witness.

He further testified that he knew a lady named Emma Taylor, and that it was his impression that she was Barbara Brown's daughter; that he had met her at Judge Helmick's office (606). That he knew Justice Helmick's signature as well as he knew his own face (608). General Henkle testified that Judge Helmick told him he knew Emma Taylor (704, 705).

In addition to these entirely disinterested witnesses, we have the testimony of Edwin A. McIntire, Martha McIntire, and Emma T. McIntire, who testify in the most positive terms as to knowing Emma Taylor, and their dealings with her. Emma T. McIntire further testifies that she was never called Emma Taylor McIntire; that the "T." in her middle name was put there by herself, to distinguish her from the other Emma McIntire in her family, and that she used the letter T because she used to be called by her father "Tinsey Ush," and she called herself, in babyhood, "Tots" (295). That she never signed "Emma Taylor" to the different deeds to which the signature of "Emma Taylor" is attached (297). She gives the circumstances attending her meeting Emma Taylor; that she met her three or four times (298-299). It further appears from the testimony of E. A. McIntire that he has used every effort to find Emma Taylor; that he has made inquiries for her, and has written to different places where he was told she was gone, all of the letters being returned to him and being an exhibit in this case—Exhibit A. H. No. 28 (450). And he is corroborated as to efforts to find her by the witness John Taylor, who told him that she had gone to Philadelphia (143). We also have the testi-

mony of George T. Gibbons, who was associated with Judge Helmick in the official capacity of constable, during Judge Helmick's whole magisterial career. He testified that Judge Helmick was a very careful man and would not take acknowledgments of persons he did not know without some one identified them (698–699). He also testified that he was familiar with Judge Helmick's signature, and he was very emphatic in his declarations that that was his signature both as attesting witness and to the acknowledgment of the Barbara Brown and Emma Taylor deed to Martha McIntire (100). But in addition, and above all, we have the certificate of Justice Helmick, who took the acknowledgment of Emma Taylor, and as to the weight to be given that as evidence we beg to refer to several decisions of this court.

In the case of *Young* v. *Duvall*, 109 U. S. 573, speaking on this subject, the court said:

"Of necessity, arising out of considerations of public policy, his certificate [meaning the notary public's] must, under the circumstances, be regarded as an ascertainment in the mode prescribed by law of the facts essential to his authority to make it, and if under such circumstances it can be contradicted to the injury of those who, in good faith, have acted upon it (upon which question we express no opinions) the proof to that end must be of such a character as will clearly and fully show the certificate to be false or fraudulent."

The mischief that would arise from a different rule could not be well overstated. In Hammond *v.* Hopkins, 143 U. S. 271, this court said on the same subject:

"We understand it to be conceded that when the evidence was taken in this suit, both of the Justices of the Peace, before whom the deed in 1860 was acknowledged,

as is admitted by the bill, were dead; and in the absence of evidence of fraud or collusion on their part the certificate ought to prevail."

See also—

Insurance Co. *v.* Nelson, 103 U. S. 544, 547.
Cissell *v.* Dutch, 125 U. S. 171.
Hitz *v.* Jenks, 123 U. S. 297.
Drury *v.* Foster, 2 Wall. 24.

The acknowledging officer in this case is dead, but his official acts, wholly unimpeached, are in evidence and are before this court; and they are in this case as presented here conclusive proof that Emma Taylor appeared before this officer and acknowledged the various deeds at the several times mentioned therein, and as certified to by that officer. His certificates should therefore decide this question against the complainant; and it appearing that this charge of the complainant is the foundation upon which the flimsy structure in each of the cases against the McIntires has been erected by counsel for complainant, in this, as also in the other cases, the same must fall, and the complainant in this cause be decreed not entitled to relief.

Martha McIntire a Bona Fide Purchaser.

As is the proof as to Emma Taylor, so is the proof as to Martha McIntire being the owner and innocent purchaser of this property. The only proof offered to sustain the charge that she was not an innocent purchaser is the attempt to prove by the witness Medford, who built the houses after the land was purchased by Martha McIntire, that he built them for Edwin McIntire, and of some witness that Edwin McIntire collected the rent from the

property after his sister purchased it; that he paid some of the tax bills on the property in 1889 and 1890; that there was no such person as Emma Taylor, and the testimony from some bank officials in Philadelphia that Martha did not have as much money in the banks there as she testified she had. We think this is substantially all the evidence on this point offered by complainant.

To meet this, what do we find from the record? In the first place, the contract was offered in evidence under which Medford built the houses. See Exhibit A. H. No. 18 (441), and that recites that it is between Medford & Waldron on the one hand, and Miss Martha McIntire on the other. Again, in the body of the contract, it provides that the cornice is to be according to some design to be suggested by Miss McIntire; and again, in the body of the contract, in reference to painting, it is to be stained if Miss McIntire prefers (442), and that contract is signed by Martha McIntire. Robert Waldron recognizes the signature of the firm of Medford & Waldron to the contract as made by Medford (162). Medford, when called in rebuttal, said he did not hear of Martha McIntire until long after the contract, and that Martha McIntire had not signed it when he signed it (361), yet he admits that the provision as to the painting or staining to be done as preferred by Miss McIntire was in the contract when signed by him (364). And, again, he says he saw Martha McIntire once in connection with the houses, and that was when he wanted to get some money, and Mr. McIntire said Miss McIntire must see the houses; that he wanted her to be satisfied (367). In the first part of his evidence he admits that Mr. McIntire said he wanted the owner of the houses to see them, and when asked by Mr. Henkle who the owner was, he answered, "This lady"—Martha McIntire (54). Again, it appears from the evidence that a release of liens

was required to be furnished before the payment in full was made, and that release is offered in evidence as Exhibit A. H. No. 8 (431), and it recites that in consideration of $1, paid by Martha McIntire, they release all claims and liens to Martha McIntire (431), and is signed by the various sub-contractors who worked on the buildings or furnished material to Medford and Waldron. There is also in evidence a receipt to Martha McIntire for the party walls used in construction of these houses. See Exhibit A. H. No. 9 (432). Medford admits the signature of Cassell to the release of liens, and admits that the other parties whose names appear on the release furnished materials on that contract (52). He also recognizes the bills for the party walls. In addition to this we have the testimony of Edwin A. McIntire and Martha McIntire as to the genuineness of that contract, the release of liens, and receipts for the party walls (227, Edwin A. McIntire's testimony; 110, Martha McIntire's testimony).

It also appears that Martha McIntire had more than enough money in bank to her credit with which to pay for this property and build the houses, although it does not appear that she had as much as $10,000 at any one time; but she did have $6,819 in one bank and $1,825 in another. See Exhibit A. H. 53 (464), and Exhibit A. H. 57 (466, 467). We have also the positive evidence of Martha McIntire that the property was bought with her own money, and that the houses were built with her money (105, 106, 107, 110). Edwin McIntire testifies that he had no interest in the property whatever; that it was bought and paid for by his sister and with her money (193, 194, 223). He further testified as to his collecting the rent and paying the taxes, that he did it the same as he did for other clients of his (223).

It seems to us, in view of what has been shown by

proof, in the form of documentary evidence, such as the deed to the property, contract for building the houses, release of liens, receipts for use of party wall, policy of insurance, in the name of Martha McIntire, which were made at a time when no idea or thought was entertained by any one, not even by complainant or defendants, that there was to be any question raised as to her ownership thereof, and of the positive evidence of Edwin A. McIntire and Martha McIntire, that there should be no question as to her being a *bona fide* purchaser of the property.

This disposes of the various allegations of fraud made in the bill.

Complainant attempted to show in rebutting testimony the value of the property, although the bill is silent upon that point. Her counsel called five or six witnesses to testify as to the value of the ground when it was sold, but they utterly failed to show that it ought to have sold for more than it brought. The first witness was William F. Hellen. All he knew was that Dick Smith had some property in that vicinity and put it in his hands for sale at eighty cents a foot, but that he could not sell it, and had no offer for it, although he tried to sell it (373, 374).

Pedrick Cusick was in the saloon business and never bought or sold any property for other people. He bought some ground on F street in that square, about three hundred feet below it; it was a corner lot having two fronts and improved by a frame house and an old brick building, and he paid a little over a dollar a foot; he did not buy by the foot, but in a lump (375).

John O'Connor was a hack driver; he bought a lot on F between First and Second streets, in 1863, and paid twenty-five cents a foot for it, and that was all. He bought and never sold any (380).

Isaac Levi is in the paint business; and not an expert

in real-estate transactions (382). In 1871 or 1872 he bought a lot with a house on it for $4,000; thought the house was worth $2,500 (381); it was in the same square as this property; could not tell what ground was worth there; never inquired (381).

Harrison M. Bennett is a Government clerk; owned a house next door to that of Levy; left there in 1874; when he left, should judge that property along there was worth 75 cents a foot (384).

Charles Duncanson is a real estate auctioneer; should judge property would have brought from 60 to 75 cents a foot (387). Had a sale of a lot at corner of F and Second streets, with an old frame house on it; it was withdrawn at 79 cents a foot.

This was all the evidence offered, and we presume it was the best that could be obtained by great zeal and industry. Instead of helping in the direction sought, we submit it leaves the complainant in a worse position than she was left in by the silence of the bill on this point.

We have thus reviewed substantially all the evidence as to the charges of fraud alleged to have been practised by the defendants upon the complainant in this cause, and we confidently submit that when the court comes to analyze it and consider it, as a whole, and in the light of what is admitted to be true, there can be no escape and no desire to escape from the conclusion that this and its kindred cases are speculative suits, such as this court has repeatedly censured, founded on the merest conjecture, and built up of defamatory statements ventured at a time when it was thought that, by reason of lapse of time and the death of witnesses, the real facts could not be ascertained.

II.

The Other Suits Against Appellants.

In addition to the evidence offered in the case at bar and to which the attention of the court has already been called, the appellants were required by an order of this court, on a petition filed by the complainant, to bring up the records in certain other suits that were instituted against Edwin A. and Martha McIntire.

Appellee's purpose in compelling us to bring up and print the great mass of matter in those cases was presumably to aid her charges of fraud in her case by such proof as could be found of fraud alleged to have been practised by appellants upon other persons and to create if possible a general atmosphere of suspicion about them. While such evidence is considered by us to be plainly incompetent, it will be briefly stated.

In *Brown* v. *McIntire*, the fraud alleged is that E. A. McIntire, being trustee under a deed of trust executed by complainant's mother, since deceased, to secure a loan of $400 made by Martha McIntire, sold the trust property to Emma Taylor without offering it at public sale as prescribed by the deed of trust. It is not denied that the owner of the property was in default when the sale was made, or that the property was subject to sale, and the only irregularity pretended is that the sale was not in accordance with the terms of the deed.

The evidence to show that no public sale was made is the testimony of several persons who lived in the neighborhood of the property, and do not remember any sale. Of these witnesses, three were school girls, aged 7, 17 and 13 years respectively at the date of the sale, and in school during most of the day (576, 580, 594).

One witness was a huckster, one a carpenter and one a stableman, who were all away from home and at business at the hours when a sale would probably be made (579, 582, 590). Three were married women who claim to have lived within sight of the property, but only one of whom professes ability to say positively that no sale was had (383, 384, 391). Another woman swears that she lived near the property (592), but she had in fact removed from the neighborhood some weeks before the sale (622).

As all this testimony was taken more than ten years after the sale, it would be remarkable if any of these persons should remember the sale. Only two of them had even the slightest interest in the property, the complainant and her uncle, who was a brother of complainant's mother. The former was only thirteen years old at the time of the sale, and lived three or four squares away (576), and shows that she knew nothing at all about her mother's affairs. The uncle, likewise, was ignorant of his sister's business, as appears from the fact that he had never heard of the deed of trust (691), the existence of which is averred in complainant's bill (563). It may be inferred from these facts that the deceased did not inform her relatives of her affairs, and their failure to remember a sale is of no significance whatever.

On the other hand, Mr. McIntire and his two sisters swear to the fact that a public sale was made and that they were present (616, 628, 645). The bill of the auctioneer, who died before the suit was brought, was produced, and shows a charge for the sale of this property at the date alleged (10, 14). It is also shown that complainant's mother, Barbara Brown, who is alleged to have been wronged by McIntire's secret sale to Emma Taylor, joined with Emma Taylor in a deed, made about three weeks after sale, conveying the property to Martha

McIntire. It is nowhere suggested that Mrs. Brown's signature was forged or that she was induced to execute this deed by fraudulent means, and the fact that it was witnessed by her attorney, Mr. Peugh, excludes the probability of imposition (707).

It is true that the court below, in its opinion (7 App. D. C. 437), animadverts upon an erasure in this deed and intimates a suspicion of alteration. But the attestation clause of the deed recites that the name of the grantee was written over an erasure, and the whole matter is fully explained in the testimony (650). It is apparent that the court was really controlled by its belief that Emma Taylor was a fictitious person, and its idea that the McIntires were to be presumed wrong-doers. That court even then felt it necessary to aid the evidence by finding that "Barbara Brown was evidently a woman of little education or business qualifications"; matters on which *there is no proof at all.* It appears that Mrs. Brown could read and write, and her brother testifies that she had acquired "a keg of gold" by domestic service and keeping a stall in the market (693). It is also suggested by the court below that the rent of the property was more than enough to meet the interest. It seems that the house rented for $6 a month. Mr. McIntire collected the rents for a part of the time, but they were not always collectable, and none of them were applied to the payment of interest on the loan (641, 642). There was, at the same time, a second trust of $600 on the property, making a total incumbrance of $1,000, bearing ten per cent. interest, which was considerably in excess of the rents. It is clear that no fraud is proven in this case.

In *Ackerman* v. *McIntire*, the complainant, Mrs. Ackerman, seeks to vacate a deed made by herself, conveying a lot to Emma Taylor, and a subsequent deed from Emma

Taylor to Martha McIntire. The charge is that complainant placed the property for sale in the hands of E. A. McIntire; that he sold it for less than its value and failed to account for the proceeds, and that complainant was imposed upon through her ignorance of business.

It appears that complainant conveyed the property to Emma Taylor by a deed, dated April 25, 1882, expressing a consideration of $300 (812), and that she afterwards, in September, 1884, executed a quitclaim to Martha McIntire, who had acquired Emma Taylor's title (811). That McIntire paid complainant $300 by one check (760, 810) and $26.45 by another (761, 791, 810), and that complainant was obliged to return a portion of this money to clear the property of certain liens for taxes, water rents, and the like. Complainant charges that she received only $75 as net proceeds, but it is shown that at about the same time she was engaged in a suit against her husband for divorce, and in a cross-bill filed in that suit she admitted having received $175 for this same property (737, 743).

There is no proof whatever to show that the property was worth more than $300, except that one witness thinks that an offer of $600 or $800 was made for it by some man whom he did not know (744). It is shown that complainant had offered the house for $300 or $400 and failed to sell at that price (776). Complainant swears that one Mr. Wood told her to see Mr. Bieber, and that Mr. Bieber would buy the house for $500; that she took Bieber to McIntire's office, and was told that it was already sold (732); but she does not say that Bieber offered her $500, and Bieber was not called as a witness.

It appears, on the other hand, that the property was a lot in the southeastern part of the city, on an unpaved street, and 12 or 15 feet above grade The lot was 17

feet wide and the house was 13 feet wide, two stories in height, and contained four rooms, each of which was occupied by a negro family (766). There was no water in the house (809), and complainant says, "I wanted to get rid of the house because I heard there was something the matter with it." "I do not suppose I would have sold it only the agent informed me that it was defective, and somebody was coming there after money—something wrong about it, and I thought it was a great trouble" (734). Again, she says that she was persecuted every day "on account of something to be paid, water or something, some tax" (740). And again: "There was some debt, I do not know what it was, that troubled me. It made me anxious to get rid of it. Whether it was water or something else I do not know" (742). Complainant's letters, written shortly before the sale, show that she had nothing but worry from the house, and she said, "I would like to sell, as it will never be any profit to me to keep the house" (808, 809, 810). It appears, also, that she needed money immediately for her divorce suit, and insisted upon selling at once for cash, and would not allow McIntire to advertise or to await a more propitious season for sale (760, 761).

As the bill in this case was filed almost nine years after the sale, the complainant had forgotten almost everything except her impression that she did not get as much money as she wanted. She does not remember signing the deed (732), and admits that she accepted McIntire's explanation of the charges on the property without attempting to understand it (733). Her testimony is full of similar slips of memory and like admissions of carelessness at the time, and no attempt whatever is made to account for her nine years' delay in seeking redress for what she then, without understanding it, regarded as a grievance. No pretense

is made of proving that the charges on the property were less than those stated by McIntire or that he made any misrepresentations as to other matters. The court below appears to have found no fraud except in the fact that complainant's first conveyance was to Emma Taylor, who was pronounced by the court to be a fictitious person. (7 App. D. C. 443.)

In *Hayne* v. *McIntire*, as in the Brown case, the charge is that E. A. McIntire, being trustee under a deed of trust given by Laura Hayne, sold the property to Emma Taylor privately and without holding a public sale as prescribed by the deed. It is not denied that the complainant was in default and the property liable to be sold, and the only complaint is that the sale was not at public auction.

To prove this charge several witnesses were introduced who professed to live near the property at the date of the sale and who fail to remember that such a sale took place. One of these witnesses who swore positively that she lived in the house at the date of the sale was shown to have been mistaken, the fact being that she did not lease that house until several weeks afterwards (927, 959, 1012). Another was at the time a girl seven years old and attended school (934). The others were housewives living in the neighborhood who admit much engrossment in domestic duties and occasional absences. The sale took place in August, 1882, and all this evidence was taken in September, 1891, and none of the witnesses were at all interested in the property. It would be a matter of surprise if any of them had recalled the sale of nine years before.

The fact of the sale is positively sworn to by two sisters of Mr. McIntire and himself, who were present, and the bill of the auctioneer, since deceased, shows a charge for selling this property. The fact that such a sale was

advertised in a public newspaper is shown by the witness whom complainant's counsel employed to search the newspaper files (972), though he had previously and before a copy was adduced professed his inability to find it (938). It is shown also that the complainant's husband, who had acted as her agent in the matter, was fully apprised of McIntire's intention to sell the property, had repeatedly asked for and obtained delay, and was finally advised that the property was sold, all nearly nine years before the bill was filed.

The opinion of the Court of Appeals asserts fraud on the part of McIntire, but does not specify wherein such fraud consists (7 App. D. C. 449). Apparently the only fraudulent feature of his conduct, in the mind of the court, was the introduction of Emma Taylor as vendee, she being assumed to be a myth.

In *Southey* v. *McIntire* the court below found no fraud, and the case requires no further consideration (7 App. D. C. 447).

While counsel for appellants have thus indicated as accurately as possible the nature of the simultaneous litigations which the counsel for appellee insisted upon injecting into this record, and while it is not apprehended that anything will be found in the voluminous supplement to the Pryor record to prejudice the appellants, it is not improper to remark that none of this extraneous matter can properly be said to bear upon any of the issues now before this court. The stipulation in the case at bar provided for the reading of the testimony in the other cases "so far as the same may be relevant to the issues raised in this case" (423). The only possible value to the appellee of the evidence in the four other cases, if believed, would be to argue therefrom that in those cases Mr. McIntire and his sisters were guilty of divers alleged fabri-

cations, impersonations and mistatements. The theory of opposing counsel, as developed in briefs filed below, is that fraud and forgery in this case may be proved by charging fraud and forgery in other entirely independent instances, and reliance is placed upon the cases of Castle *v.* Bullard, 23 How. 186, and Lincoln *v.* Claflin, 7 Wall. 138. These cases, however, only hold that evidence of collateral acts of fraud may be shown to prove a fraudulent *intent* in the specific case under examination. In one case such evidence was received to show that a firm of commission merchants sold the plaintiff's goods to an insolvent, knowing the vendee's insolvency. In the other, evidence of other purchases with intent to defraud was received to show a like intent in the particular case on trial. But here the question is one not of subjective intent but of objective fact. The charge to be proved is that Mr. McIntire committed forgery, made false personations, and told deliberate falsehoods. If such facts are proved, there is no room for question as to his intent; it was incumbent on the complainant to establish the specific facts, and the intent would have taken care of itself. No court of justice ever held that one forgery can be proved by proof of another, any more than one burglary can be established by evidence of another. There is no possible excuse for the unconscionable enlargement of this record by the appellee, to the grievous expense of appellants, merely for the sake of casting suspicion upon transactions utterly irrelevant. It is submitted, therefore, that whatever may be the action of this court upon the case appealed, the costs of the supplemental records should be taxed against the appellee.

R.R. Co. *v.* Schutte, 100 U. S. 644.

The incompetency of this evidence is clearly pointed out by Mr. Justice Hagner (494).

We have now laid before the court the evidence in all the cases, with comments on the same, and having no doubt that the counsel for complainant will resort to the same method of attacking the appellants in his argument before this court as was resorted to in the court below, we refer to some of the aspersions that were cast in argument in the court below upon the appellants' credibility. In that court counsel for appellees did their utmost to strengthen their case by what Mr. Justice Hagner characterized as "the furious and unceasing denunciation of the McIntires upon every point" (496).

Comment was made on the fact that some of the deeds involved in these cases were not recorded for various periods after their execution, and this was relied upon as a badge of fraud. A contrast was instituted between certain deeds admitted by complainants to be *bona fide*, which were recorded promptly, and some of which recordation was delayed and which were therefore stigmatized as fraudulent. Of the deeds not promptly recorded, one was left unrecorded for nine months, another ten months, another two years and five months, another six years and seven months, two were never recorded, and one not until after this litigation was begun. So far as concerns the first three, the delay was by no means unusual. One of the others was the deed from Barbara Brown and Emma Taylor to Martha McIntire, which was denounced as a forgery, but which happens to have been attested by Harleston and Peugh, who swore to its genuineness as above stated. The remaining three were deeds to Martha McIntire, who seems to have been ignorant of the recording law (754, 755). One of the deeds charged to be fraudulent because of delay in recording was that of E. A. McIntire to Hartwell Jenison, made in June, 1881, conveying the Pryor property under the foreclosure sale.

But this was evidently a *bona fide* deed, and Jenison's failure to have it recorded is not evidence of fraud on McIntire's part. Why a like delay on the part of Miss McIntire should suggest fraud is not at all clear.

Again, in previous arguments, stress was laid upon the fact that Mr. McIntire had not preserved, and could not produce, books, letters, checks and other paper evidence of all the multitudinous and multifarious details involved in these five cases, and that he and his sisters could not remember all of a great number of matters of fact connected with the old transaction in question. In a brief, applying to all the cases, and filed in the Court of Appeals, ingenious and laborious counsel devoted about 40 pages to comment upon these points, and under the caption "E. A. McIntire as a Non-Mi-Recordo Witness" four pages were employed to collate the points, scattered through the thousand pages of the record, as to which he could not positively testify. Although a repetition of that line of argument is anticipated, counsel for appellants will not undertake to meet it at any great cost of time or paper.

These suits were brought from nine to fifteen years after the transactions complained of, and the taking of testimony ran on until March, 1894. This was nearly 13 years after the supposed cause of action in the Pryor case originated. It would be strange indeed if Mr. McIntire, who appears to have been actively engaged in a large business, involving many details, had preserved all, or indeed any, of his records and other papers in settled cases for a dozen years. The transactions in question were all of minor importance, one might almost say insignificant, no one of them involving property worth more than $2,000 or $3,000. It is shown that some of Mr. McIntire's papers were destroyed by a fire, and that others were lost,

destroyed or confused in the removal of his office from one location to another. The Court of Appeals expressed doubt as to the fire, but, even leaving that question aside, the removal of the office, the lapse of time, and the natural inattention to papers bearing upon trifling and completed business remain as sufficient to account for the loss and destruction of papers. The United States Government, with all its powers, has not been so successful in preserving papers and records that a private individual ought to be criticised for sometimes failing. It will be observed that the title deeds were preserved, even when not recorded, and quite as much of the contemporary correspondence and other documents are produced as could be reasonably expected. It will be observed that, on the other hand, the complainants in these cases produced *practically no papers at all.* Why Mr. McIntire should be held to a stricter accountability for the presentation of papers than the other parties is not explained.

When we come to failure of memory, honors are at least easy between the McIntires and their adversaries. The worthlessness of the testimony offered by complainant in this case, the failures to recollect, and self-contradictions of her witnesses have been already pointed out, while as for Mrs. Pryor herself, her faculty of oblivion is really marvelous. (See opinion of Hagner, J., p. 496.) If Mr. McIntire and his sister, whose interests in any of these properties were comparatively slight, had remembered the details of the various sales and purchases better than the original owners, who lost apparently their only property by the alleged frauds, they would have marvelous memories, surpassing the professors of mnemonics.

Briefly adverting to some of the failures of memory relied upon in former arguments, we submit that it is not strange—viewed apart from invective and prejudice—that,

after the lapse of ten years, witnesses could not accurately fix the age of Emma Taylor, or could not remember whether they had seen her two, three, or four times, or had forgotten the year in which each of two or three safe-deposit boxes were rented, or were uncertain whether they had seen a certain one of a dozen deeds signed, or were unable to say whether a certain payment was made by cash or by check. Among the failures of Mr. McIntire's memory which were trumpeted forth as suspicious were the facts that he did not recall whether he got a deed from the recorder's office or sent a clerk for it; that he could not say what had been written and erased under a word in a deed; that he had forgotten whether he collected the rent of certain small houses at certain periods; that he did not remember the street and number of Emma Taylor's residence, and that he failed to recall why a certain consideration was recited in a certain deed ten years old. Miss Martha McIntire was regarded as subject to suspicion because she could not go back over a period of thirty or forty years and identify by date, amount, and origin the several increments of her fortune, or recall how many bonds and of what denomination she sold at a certain date twelve or fifteen years before, or how much money she kept at each of several banks at various dates.

Doubtless the same derogatory analysis of appellants' testimony will be presented to this court, and we submit in advance that it would have been really a suspicious circumstance if these witnesses had been ready with answers to all the questions like these. Miss McIntire shows very clearly that she had means amply sufficient to enable her to buy this property (118, 119, 121, 129, 131, 133, 443, 444, 464, 465, 466). Both she and her brother are corroborated by other witnesses as to every material

fact, and remember everything which persons of normal memory should be expected to recall after the lapse of a decade. And the fact which was made the turning point of all these cases, the existence of Emma Taylor, is as fully established as the existence of an absent human being could possibly be. On such a point it is proverbially hard to overcome a determined and hostile skepticism. A noted author once made, for the sake of illustration, a strongly plausible argument that Napoleon Bonaparte never existed.

III.

No Grounds of Equity Interference Stated in the Bill.

The propriety and regularity of the sale of June 17, 1881, are not questioned. It is admitted that the deed of trust to secure Jenison $450 was valid and that the money was actually loaned to the complainant. There is no pretense that she ever paid or offered to pay a penny upon this debt, either before the sale or in the nine years intervening between that event and the institution of this suit. Both the original and the amended bill aver that the note was "overdue and unpaid" (2, 7).

Nor is any question made as to the fact that McIntire, in selling the property, was acting under the positive direction of Jenison, the party secured. McIntire's testimony on this point is fully corroborated by Jenison, and the written order under which the sale was made is put in evidence (43, 430). The averment in the original bill (3) that the property was bought in Jenison's name and a deed made to him without his knowledge or consent, is emphatically denied by Jenison himself in his answer and in his testimony, to which reference has heretofore been made. Jenison was fully advised of the facts throughout,

and even now is entirely satisfied with Mr. McIntire's conduct (41, 46, 396, 399).

It is true that Mr. Jenison had forgotten many of the details of the business, and apparently, from this fact alone, the Court of Appeals drew the inference that Jenison was a credulous old man. Jenison was at the time the chief of an important division in the Treasury Department and only sixty-one years of age (401). He shows no indications of senile debility, unless inability to recall long forgotten details can be so considered, and in this respect he is at no greater disadvantage than the other witnesses, and particularly the complainant.

It may be remarked, too, that the bill is not brought by Mr. Jenison. On the contrary, he was made a party defendant, and he expresses no dissatisfaction with the transactions complained of by Mrs. Pryor. The court is, therefore, not called upon to redress any wrongs to him, and there is no need even to inquire whether he was injured in any way.

The only claim made is that Mrs. Pryor was deceived and defrauded by a promise of Mr. McIntire that her husband should be allowed to buy the lot and pay for it by monthly instalments. Assuming every fact alleged to be fully proved, she is even then entitled to no relief.

In the first place, there was no consideration for the alleged promise, and the Pryors are in no worse condition than if it were not made. The property was going to be sold, and they had no means to prevent or delay the sale. They gave nothing for the promise, and the sums that they afterward paid were no more than the rent which they had been paying before.

In the second place, McIntire had no right or authority to make such a promise. He was a mere trustee, and his powers, strictly circumscribed by the deed of trust, ex-

tended only to making the sale and executing a deed to the purchaser. This fact Pryor knew, or was bound to know, and no deception could be imputed to McIntire, from the fact of making the promise alleged. If McIntire ever made such agreement it was in a character distinct from that of trustee, and his keeping or breaking the contract was entirely collateral to the trust.

Assuming, however, that McIntire made an agreement such as is alleged, Mrs. Pryor fails to show that it was performed on her part or that of her husband. She does not pretend that they paid the purchase price or ever paid the rent for the period during which they occupied the property. The most that she can say is that they paid "a good deal, over $72 of rent, but I disremember" (25), and the receipts which she produces show an aggregate of only $90 paid in twenty-one months after the sale (424). From August, 1882, to March, 1883, no payments appear, and after the latter date nothing at all was paid, although complainant claims to have remained in possession of the property until September, 1884. Mrs. Pryor admits that her husband did not have $100 to make the deposit required by the terms of sale (25), and shows that her husband had not a dollar to carry on his business (23).

It is entirely immaterial in this case, therefore, what, if any, agreement McIntire made with Pryor. It will scarcely be contended that, after the Pryors had failed to make the payments agreed upon, and had surrendered the property, McIntire was bound to make them a title, and it is no less absurd to say that after their failure and abandonment, McIntire and his vendees were bound to hold the property in trust for Mrs. Pryor until, after the lapse of ten years, she could compel them to let her redeem it out of the rents and profits.

Finally, whatever fraud may have been committed, Mrs. Pryor was not affected by it, and cannot complain of it. Her title was completely and regularly divested by the sale under her deed of trust. The alleged agreement, if made at all, according to her own statement, was with her husband and not with her. Upon his death, his wrongs and his remedies therefore devolved upon his heirs or personal representatives, and she is neither.

It is accordingly submitted that even accepting Mrs. Pryor's allegations as proved, she has no claim for the redress of wrongs. With frauds, if there be any, practised upon other persons, she has no concern, and no one else now seeks relief on account of such supposed frauds.

The existence or non-existence of Emma Taylor therefore becomes quite immaterial. If she was a figment of McIntire's mind, the most that can possibly be said is that Jenison's deed to her is void and the title to the property remains in Jenison. This fact does not affect Mrs. Pryor's case or entitle her to any relief. The name of Taylor was not introduced into the transactions until after Mrs. Pryor had lost her title through a regular sale under a valid deed of trust. If the use of Emma Taylor's name was a fraud, it does not reach back of Jenison's deed to her, and certainly the valid sale was not annulled by a subsequent fraud in relation to the property.

Granting even for the sake of argument that Emma Taylor was an alias of McIntire's, the supposed fraud was upon Jenison, and could afford Mrs. Pryor no grounds of complaint. Had McIntire taken a conveyance to himself under an assumed name while he was trustee under Mrs. Pryor's deed, some connection might be perceived between such a fraud and her loss of her property. But here it is not denied that everything under that deed was properly conducted, and McIntire's trusteeship for Mrs.

Pryor ceased when he made the deed to Jenison on June 28, 1881, the validity of which is not questioned. McIntire was certainly then divested of his character as trustee and *functus officio*, so far as concerned the Pryor trust. The Emma Taylor deed was not made until April 19, 1882, nearly ten months later.

Furthermore, it is perfectly obvious that, if Mr. McIntire really desired to get this property under his control, it was entirely unnecessary for him to resort to the awkward and dangerous device of inventing a fictitious person such as Emma Taylor is alleged to be, thereby merely necessitating subsequent forgeries and personations. There was no reason why the title should not have been taken in the name of his sister, who is charged with the signing of Emma Taylor's name, and who might as well have used her own. If Emma T. McIntire was willing to lend her pen to assist her brother, she was certainly willing to lend her name, and the introduction of a pseudonym was an utterly gratuitous and ridiculous device.

If, then, Miss Emma T. McIntire were, as is charged, the real Emma Taylor, then Emma Taylor was not a fictitious person, but the assumed name of an actual being. The deeds, therefore, are not void or even voidable. A deed to a person under an assumed name conveys title, as was held in the case of Colorado Coal Co. *v.* United States, 123 U. S. 307, 317.

The result is that, in any view of the case, the decree below was erroneous.

IV.

Complainant is estopped from setting up any claim by reason of her delay and acquiescence.

The time which elapsed between the acts complained of and the filing of the several bills is as follows:

In the	Pryor	case	9	years and 4 months.
" "	Brown	" about	10	"
" "	Ackerman	"	10	"
" "	Southey	" "	15	"
" "	Hayne	" "	9	"

Nine years and four months were allowed to pass after the sale complained of before any steps were taken by the complainant Pryor towards setting it aside. Six years and four months elapsed after Miss McIntire acquired title, and nearly four years after she commenced building on the lot; although complainant knew about the sale and the building going on.

She testifies that she met Mr. McIntire in Judiciary Square shortly after the sale in 1881 and intimated to him in a vague way that she felt aggrieved about it (23), as people generally do at such times. She also told the builders who were erecting the houses on the lot that she had been defrauded (55). So that she had the subject fully before her mind, to decide whether she would sue or not.

The only excuse offered for the long delay in bringing suit is the averment in the bill that "complainant has only recently discovered" that the sale of the lot in 1881 was made by McIntire in his own interest and that a deed had been made to Jenison (8). By her own testimony it appears that there existed no excuse or reason for her not

having commenced her proceedings in proper time. But on this point it is submitted that there never was any reason, nor the intention, on the part of complainant, to seek to set aside the sale, and it only occurred to her, after she had been led to believe she might get considerable money by reason of the property having enhanced in value, both on account of the growth of the city and the improvements put thereon by Miss McIntire.

If we should be mistaken in this opinion, which is formed from an examination of the records in these cases, and if the complainant acted in good faith, even then she is not entitled to relief, for courts of equity require great diligence on the part of persons in discovering their rights in reference to real estate, and delay of the kind shown in this case is not susceptible of explanation or excuse upon such frivolous statements as those relied upon by this complainant.

This court, in Hammond *v.* Hopkins (143 U. S. 251), says:

"No rule of law is better settled than that a court of equity will not aid a party whose application is destitute of conscience, good faith, and reasonable diligence, but will discourage stale demands for the peace of society, by refusing to interfere where there have been gross laches in prosecuting rights, or where long acquiescence in the assertion of adverse rights has occurred. The rule is peculiarly applicable where the difficulty of doing entire justice arises through the death of the principal participants in the transactions complained of, or of the witness or witnesses, or by reason of the original transactions having become so obscured by time as to render the ascertainment of the exact facts impossible;" and further:

"It is conceded that the proposition that where a trustee, or person acting for others, sells a trust estate and becomes himself interested in the purchase, the *cestuis que trustent* are entitled, as of course, to have the purchase

set aside, is subject to the qualification that the application for such relief must be made within a reasonable time, and that laches and long acquiescence cannot be excused except by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor."

It seems to us that no better argument can be made in these cases on the subject of laches than to beg the attention of this court to the careful and able opinions of the learned judge who decided the cases in the first instance in the court below at special term, on hearing and rehearing. They are most conclusive and satisfactory on the subject (record in Pryor case, 470, 485). We copy here the authorities cited and relied on by him for convenience of reference:

McKnight *v.* Taylor, 1 How. 161.
Stearns *v.* Page, 7 How. 829.
Hoyt *v.* Sprague, 103 U. S. 636.
Hammond *v.* Hopkins, 143 U. S. 251.
Galligher *v.* Caldwell, 145 U. S. 373.
Foster *v.* Mansfield, 146 U. S. 99.
Johnston *v.* Mining Co., 148 U. S. 370.
Lane *v.* Locke, 150 U. S. 201.
Halstead *v.* Grinnan, 162 U. S. 416.
Harwood *v.* Railroad Co., 17 Wall. 78.
Twin Lick Oil Co. *v.* Marbury, 91 U. S. 587.
Brown *v.* Buena Vista Co., 95 U. S. 157.
Hayward *v.* National Bank, 96 U. S. 611.
Holgate *v.* Eaton, 116 U. S. 33.
Davidson *v.* Davis, 125 U. S. 90.
Société Fonciere *v.* Millikin, 135 U. S. 304.
Oliver *v.* Gray, 1 H. & G. 204.
Clabaugh *v.* Byerly, 7 Gill, 364.

White *v.* White, 1 Md. Ch. 53.
Hitch *v.* Fenby, 6 Md. 218, 224.
Glenn *v.* Hebb, 17 Md. 260.
Nelson *v.* Bank, 27 Md. 51.
Hill *v.* Clagett, 48 Md. 223.
Amey *v.* Cockey, 73 Md. 305.
Godden *v.* Kimmell, 99 U. S. 201.
Richards *v.* Mackall, 124 U. S. 186.

In addition to the authorities above cited, we invite the attention of the court to the case of Willard *v.* Wood, 164 U. S. 502–524, and to the case of Whiting *v.* Fox, 166 U. S. 637, and the late case of Baker *v.* Cummings, 169 U. S. 189.

If it should be argued that the present case is one of an express trust, and, for that reason, the rule of laches does not apply, our reply is that this is not a case of an express trust, and even if it were, the doctrine of laches does apply.

Preston *v.* Horwitz, 85 Md. 164.
Hanson and wife *v.* Worthington, 12 Md. 441.
Whiting *v.* Fox, 166 U. S. 637.

It may be contended, as it was in the court below, that the complainant was an ignorant colored woman, not acquainted with the business transactions of life, and the rule should not be applied to her. But we submit that the record shows that she, or those behind her in this matter, were not slow to grasp the situation, and were shrewd enough to postpone this action, until lapse of time has placed the McIntires at a great disadvantage. But however this may be, yet there is no escape from the rule of laches, for neither poverty, illiteracy nor ignorance of the law excuses laches.

Lens *v.* Kengla, 8 App. D. C. 239.
Leggett *v.* Standard Oil Co., 149 U. S. 294.
Hayward *v.* Bank, 96 U. S. 611.
McQuiddy *v.* Ware, 20 Wall. 14.
Naddo *v.* Bardou, 47 Fed. Rep. 788.
De Estrada *v.* Water Co., 46 Fed. Rep. 280.

The lapse of time has aided the appellee through the death and disappearance of witnesses, the loss and destruction of papers, etc.; but it has also brought with it the countervailing bar of the doctrine of laches. "The hour-glass must repair the ravages of the scythe."

It is submitted that the decree appealed from is wrong, and should be reversed, and the bill be dismissed.

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Office Supreme Court U. S.
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No. 109.

Supp. to Brief for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1897.

Filed Jan. 7, 1899.

No. 109.

Edwin A. McIntire and Martha McIntire, Appellants,

vs.

Mary C. Pryor.

Appeal from the Court of Appeals of the District of Columbia.

Opinion of Mr. Justice Hagner in the Supreme Court of the District of Columbia,

ALSO

Opinion of Mr. Justice Shephard in Court of Appeals D. C.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.

IN THE

Supreme Court of the District of Columbia.

MARY C. PRYOR *v.* E. A. MCINTIRE, Equity, No. 12,761.

ELIZABETH BROWN *v.* E. A. MCINTIRE, Equity, No. 12,977.

ANNIE M. ACKERMAN *v.* E. A. MCINTIRE, Equity, No. 12,978.

CATHARINE SOUTHEY *v.* E. A. MCINTIRE, Equity, No. 13,034.

LAURA HAYNE *v.* E. A. MCINTIRE, Equity, No. 13,177.

F. H. MACKEY,
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For Complainants.
S. S. HENKLE,
For Defendants.

Opinion of Justice Hagner.

These five cases have been heard together. The bill in the earliest case, the suit of Mary C. Pryor, was filed the 21st of October, 1890; the others at intervals up to the 12th of May, 1891.

Edwin A. McIntire is a defendant in each case, Martha in all the cases except that of Hayne, Emma Taylor in Pryor's, Brown's, and Ackerman's, Jenison to the Pryor bill, and Brouner in the Brown case.

Answers were filed by all these defendants to the original and amended bills except by Brouner and by Emma Taylor. An order of publication was passed in two of the cases against Emma Taylor, but there is nothing to show it was ever published, and no decree *pro confesso* was ever obtained against her.

Against Brouner no further proceedings seem to have been taken beyond making him a defendant to the Brown bill.

A large amount of testimony was taken in each case, all of which with reference to the McIntires and to Emma Taylor it was stipulated might be read in each suit, subject to just exceptions. As a result the mass thus applicable to each case is unusually large, and its proper adaptation to the particular issues became a matter of considerable difficulty.

In the view I have felt compelled to take of the entire litigation it has become unnecessary to point out here in detail the application of the accumulated testimony to the many points of contention or to announce a decision upon the numerous and somewhat intricate questions of evidence presented in the course of the arguments, and I shall refer to the testimony only so far as may be requisite to the examination of what I consider the indispensable preliminary question in the controversy, which is whether the complainants have been guilty of unreasonable delay under the circumstances in the assertion of their supposed rights; and, if this be so, whether they have presented satisfactory explanations and excuses for whatever laches in the prosecution may be found to exist.

This inquiry properly meets us at the threshold of the investigation, since the exercise of proper diligence in the prosecution of rights is the condition universally annexed to the right to relief in courts of equity. Familiar as this principle is, it may assist in the examination to recall here the language in which it has been expressed by the courts of the highest resort:

"Equity discountenances stale and antiquated demands, for the peace of society, by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights. It is not merely in analogy to the statute that a court of equity refuses to lend its aid to stale demands, but there must be conscience, good faith, and reasonable diligence to call into action the powers of this court. When these are wanting the court is passive and does nothing. Laches and neglect are always discountenanced."

(McKnight *vs.* Taylor, 1 How., 161.)

Wherever such delay appears on the face of the application it then becomes necessary, as expressed in 2 Wall., 87, Badger *vs.* Badger, that "the party who makes such an appeal should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim, how he came to be so long ignorant of his rights, and the means used by the respondents to fraudulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case, on his own showing, without inquiring whether there is a demurrer or formal plea of the statute of limitations contained in the answer."

In 7 Howard (829), Stearns *vs.* Page, Justice Grier said: "But as lapse of time necessarily obscures the truth and destroys the evidence of past transactions, courts of chan-

cery will exercise great caution in sustaining bills which seek to disturb them. They will hold the complainant to stringent rules of pleading and evidence and require him to make out a clear case. Charges of fraud are easily made, and lapse of time affords no reason for relaxing the rules of evidence or treating mere suspicion as proof. If a defendant can be compelled to open settled accounts to explain or prove each item, after a lapse of near thirty years, by general allegations of fraud—if the fraud can be proved by his inability to elucidate past transactions after so great a length of time, or by showing some slips of recollection, or by contradicting him in some collateral facts by the frail recollection of other witnesses—no man's property or reputation would be safe."

"A complainant seeking the aid of a court of chancery under such circumstances must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment—must specify how, when, and in what manner it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved. If a mistake is alleged, it must be stated with precision and made apparent so that the court may rectify it with a feeling of certainty that they are not committing another and perhaps greater mistake, and especially must there be distinct averments as to the time when the fraud, mistake, misrepresentation, or concealment was discovered and what the discovery is, so that the court may clearly see whether by the exercise of ordinary diligence the discovery might not have been before made."

In 103 U. S., 636, Hoyt *vs.* Sprague, the court remarks: "In such cases it is not merely a question as to what information respecting their rights parties do actually obtain, but as to what information they might have obtained had they used the means and opportunities directly at their

command. Others, acting in good faith, also have rights—the world must move, and it is the interest of the community that controversies should have an end."

These principles have received further enforcement from the more recent decisions of the Supreme Court, commencing with the case in 143 U. S., 251, Hammond *vs.* Hopkins, where the antecedent cases received a careful examination. There can be no doubt the courts everywhere, of recent years, have shown an increasing disposition to listen to the defense of laches, and the citations I shall read from the latest reports of the Supreme Court afford convincing proof of this statement. These cases, says the Supreme Court in 145 U. S., 373, Galliher *vs.* Cadwell, "all proceed upon the theory that laches is not, like limitations, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relation of the property or parties."

In 146 U. S., 99, Foster *vs.* Mansfield R.R. Co., Justice Brown says: "The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove, and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law, which demands not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts. Especially is this the case where the party complaining is a resident of the neighborhood in which the fraud is alleged to have taken place."

Again, in Johnston *vs.* Standard Mining Co., 148 U. S., 370, the same justice says: "While there is no direct or positive testimony that plaintiff had knowledge of what was taking place with respect to the title or development

of the property, the circumstances were such as to put him on inquiry, and the law is well settled that where the question of laches is at issue the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known to him were such as to put upon a man of ordinary intelligence the duty of inquiry."

In 150 U. S., 201, Lane *vs.* Locke, the court said speaking by Mr. Justice Shiras: "Courts of equity, it has often been said, will not assist one who has slept upon his rights and shows no excuse for his laches in asserting them. The plaintiff's excuse in this instance that he preferred from prudential reasons to receive a salary from the defendant rather than to demand a royalty is entitled to a less favorable consideration by a court of equity than if his conduct had been that of mere inaction."

These cases are cited with approval by Mr. Justice Brewer in the most recent utterance of that court on the subject, 162 U. S., 416, Halstead *vs.* Grinnan. The courts, too, have relaxed the older rule that laches is admissible as a defense only where the delay has been very prolonged. Adhering to the declaration that "each case must stand upon its own peculiar circumstances," they have, more especially of late years, sustained the defence in some cases where the delay has fallen short of the time fixed by the statute for suits at law.

This disposition of the courts is illustrated in 145 U. S., 373, Galliher *vs.* Cadwell. "The laches of the appellant," says the court, "is such as to defeat any rights which she might have had, even if these prior questions were determined in her favor; and in this respect it is worthy of notice that there has been in a few years a rapid and vast change in the value of the property in question. It is now an addition to the city of Tacoma.

The census of 1880 showed that to be a mere village, the population being only 1,098. The census of 1890 discloses a city, the population being 36,006. Of course such a rapid increase during this decade implies an equally rapid and enormous increase in the value of property so situated as to be an addition to the city, and the question of laches turns not simply upon the number of years which have elapsed between the accruing of his rights, whatever they were, and her assertion of them, but also upon the nature and evidence of those rights, the change in value, and other circumstances occurring during that lapse of years. The cases are many in which this defense has been invoked and considered. It is true that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle pervades them all. They proceed upon the assumption that the party to whom laches is imputed has knowledge of his rights and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned, and that because of the change in condition or relations during this period of delay it would be an injustice to the latter to permit him to now assert them. A reference to a few of the cases in our reports may not be out of place. In Harwood *vs.* Railroad Co., 17 Wall., 78, a delay of five years on the part of the stockholders in a railroad company in bringing suit to set aside judicial proceedings regular on their face, under which the railroad property was sold, was held inexcusable. In Twin Lick Oil Company *vs.* Marbury, 91 U. S., 587, a director of a corporation who had loaned money to it and subsequently bought its property at a fair public sale by a trustee was protected in his title against the corporation,

suing four years thereafter to hold him as trustee of the property for its benefit, it appearing in the meantime the property purchased had increased rapidly in value. In Brown *vs.* County of Buena Vista, 95 U. S., 157, a county was held barred by its laches from maintaining at the end of seven years a suit to set aside a judgment fraudulently obtained against it, and that, too, though it did not affirmatively appear that the supervisors of the county had knowledge of the existence of the judgment till about twenty months before the commencement of the suit. In Hayward *vs.* National Bank, 96 U. S., 611, a party who had borrowed money of a bank and deposited with it as collateral security certain mining stocks, which were sold by the bank upon his failure to repay the loan, was held barred by his laches in a bill to redeem, filed four years thereafter, the stocks in the meantime having greatly increased in value. In Holgate *vs.* Eaton, 116 U. S., 33, a married woman who, on being informed of a contract made by her husband for the sale of an equitable interest in real estate held by her in her own right, repudiated it and refused for two years to perform it, was not permitted thereafter to maintain a bill for specific performance of the contract, the value of the property having depreciated. In Davidson *vs.* Davis, 125 U. S., 90, a bill to compel the specific performance of a contract to sell personal property upon the payment of a promissory note, payable at a date after the making of the contract, was dismissed on the ground of laches of the complainant in waiting five years after the maturity of the note before filing his bill, the property in the meanwhile having increased in value. In Societé Foncieré *vs.* Milliken, 135 U. S., 304, a delay of two years in the commencement of proceedings to set aside a judgment for usury was adjudged fatal, the amount of the usury being small and the judgment having been

enforced in the meantime by the sale of real estate." "But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitation, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced; an inequity founded upon some change in the condition or relations of the property or the parties."

To these citations by the court may be added the cases of 103 U. S., 636, Hoyt *vs.* Sprague, where relief was refused to two complainants who had respectively neglected to sue for nine and seven years after they had become of age, and 148 U. S., 370, Johnston *vs.* Standard Co., where relief was refused after delay of six years.

Several rulings of this description are found in the Maryland Reports which are deserving of particular notice, as the courts of that State have consistently adhered to the liberal application of the statute of limitations in actions at law laid down nearly forty years ago in 9 H. & G., Oliver *vs.* Gray, which treated that enactment as creating a presumption of payment, which might be rebutted by acknowledgment that the debt was really unpaid, although such acknowledgments have been held insufficient for the purpose by the Supreme Court, which construed it as a statute of repose in Bell *vs.* Morrison. Nevertheless the chancery courts of Maryland afford many decisions supporting the defense of laches after short periods, as in Clabaugh *vs.* Byerly, 7 Gill, 364, where relief was refused on a bill filed in February, 1844, to set aside a deed executed in 1842; in White *vs.* White, 1 Md. Chancery, 53, where the transaction occurred in 1840 and the bill was filed in 1846; in Hitch *vs.* Fenby, 6 Maryland, 224, where there had been a delay of seven years; in Glenn *vs.* Hebb, 17 Maryland, 260, after four years; in Nelson *vs.* Hagerstown Bank, 27 Md., 51, after five years;

in Hill *vs.* Clagett, 48 Maryland, 223, on a bill filed in 1856 by a surviving partner against the representatives of a deceased partner, who died in 1856, for a settlement of copartnership dealings; and in 73 Md., 305, Amey *vs.* Cockey, on a bill filed by a widow to set aside a deed less than five years after she had a right to sue.

In applying these principles to the cases before us it is proper first to consider the extent to which the several plaintiffs have observed the injunction that "conscience, good faith, and reasonable diligence must appear to call into action the powers of an equity court."

The bill asks in somewhat different forms for an accounting from Edwin A. McIntire for the proceeds of the several lots sold by him for the different owners; for an account from him and his sister for rents and profits of the said parcels of land; for a readjustment of the accounts of the several *cestui que trust*, in the different deeds of trust with the respective debtors, which are alleged to have been fraudulently adjusted by McIntire; for the cancellation of the various deeds, and for a recovery of possession of the lands from whoever may happen to be holding them and their restoration to the respective owners who were such when they were sold or to their descendants.

In the Pryor case it is alleged that McIntire, acting under a deed of trust from the owners, in June, 1881, sold the property therein described at public sale, after advertisement. There is no charge the amount realized was insufficient, but it is alleged that complainant's husband really became the purchaser at such sale; that Pryor and his wife remained in possession and continued to pay McIntire rent until September, 1884, upon his representation that he would apply the rent thus paid to the indebtedness due on the purchase, and that when all should

be paid he would convey the property to complainant; that "complainant has only recently discovered that the sale was made without the knowledge, authority, or direction of the holder of the note secured by the trust," for the fraudulent purpose of securing the property to McIntire himself; that a few days after the sale McIntire conveyed the land to Jenison, the codefendant, secretly and unknown to Jenison and without his consent, authority, or knowledge, and in April, 1882, procured the execution by Jenison of a conveyance of the property to one Emma Taylor, a fictitious person; that the subsequent conveyance in 1884 by Emma Taylor to Martha McIntire was fraudulent, as was also a quitclaim deed executed by Jenison in 1887 to Emma Taylor, and the consideration of $100 named therein is also false and was never paid to Jenison.

In an amendment filed a month later the complainant avers that "all of the foregoing facts have only been discovered by complainant within the past few months."

The sale took place in June, 1881; the bill was not filed until October, 1890, nine years and four months afterwards, a period within which any action at law to recover the balance alleged to be due by McIntire out of the proceeds of sale or for rents and profits would have been thrice barred.

Referring to the testimony only so far as it bears on the question of due diligence, it is proved that Pryor lived with the complainant, his wife, in the house, paying rent monthly to McIntire for three years after the sale, when the key was delivered by them to McIntire; that her husband survived until July, 1890; that in 1884 they removed to a house opposite and very near the property sold, and that she lives in that neighborhood still; that neither Pryor nor his wife ever made the deposit required by the

admitted terms of sale or paid either the cash or either of the deferred instalments or demanded or received a deed; that they stood by and saw the property improved by buildings by Martha McIntire without objection. The complainant also swears she met McIntire soon after the sale in Judiciary square (nine years ago) and intimated her dissatisfaction to McIntire with his proceedings at the sale. Jenison, the party secured and the codefendant who received a conveyance as purchaser after the sale, is a clerk in one of the departments and resided in Washington then and has lived there ever since, and the due execution of his deed to E. A. McIetire, recorded in July, 1881; of that to Emma Taylor, recorded in April, 1882, and of that to Martha McIntire, recorded in October, 1887, of the property so knocked down to him at the sale, is not disputed. A deed purporting to convey the property from Emma Taylor to Martha McIntire has been on record since October, 1886. It also appears that the indebtedness to Jenison, to secure which the trust to E. A. McIntire, in May, 1880, was made, had its origin as far back as May, 1876, in a deed of trust from the Pryors to B. H. Warner and Henry McIntire, duly recorded.

It is not denied that in May, 1881 (before the sale), Pryor and wife had undertaken to convey the property to Martha McIntire in consideration of $5 and the assumption by her of the liens on the property by deed duly executed and acknowledged, which Martha McIntire refused to accept.

If the Pryors really believed the property was struck off to Thomas Pryor at the public sale in 1881, it was surely incumbent upon them to present to the proper court during all the intervening years their complaint as to the fraudulent conduct, of which they then had ample knowledge, if the complainant tells the truth in her bill, al-

most from the day of the sale; but they remained silent in the face of this knowledge and in the light of all the circumstances before referred to.

That proper diligence was exhibited in the commencement of the Pryor suit cannot be successfully contended.

In this as well as in the Hayne case mention is made in the bill of the fact that the complainants are colored people and of their asserted ignorance. It appears, however, they could all read and write. Hayne, who is a clergyman, seems to be a fairly educated man. The courts will be sedulous to protect persons in the condition described against imposition, but their color and alleged helplessness cannot be successfully invoked as a justification for making questionable or exceptional rulings against those who suffer to deal with them.

We have seen how explicitly the courts have declared that laggard complainants must set forth specifically what were the impediments to an earlier prosecution of their claims; how they came to be so long ignorant of their rights; the means used by the guilty party fraudulently to keep them in ignorance; with distinct averments of the time when the fraud was discovered; "that the court may clearly see whether by the exercise of ordinary diligence the discovery might not have been made before;" and, further, that it is all-important to consider "what information they might have obtained if they had used the means and opportunities directly at their command;" that the party should have used reasonable diligence to inform themselves of the facts, and he is chargeable with such knowledge as he might have obtained upon inquiry.

Evidently there was no sufficient compliance with these requirements in framing the bill. The complainant simply declares "she only recently discovered" certain alleged facts, among these that the sale was made by McIntire

without the knowledge, &c., of Jenison, and that Jenison never received the $100, the consideration for one of the deeds (both of which assertions are admitted by Jenison to be incorrect), but there is no attempt at an explanation why this knowledge could not have been obtained at a much earlier day. Nor does any such explanation appear in the proof. That which was obtainable from others in 1890 would seem to have been equally obtainable from the same or similar sources in 1889, or during many years previously, for it is proved in the case that as far back as 1887 a bill had been filed in this court, No. 10745, equity, making similar accusations that Emma Taylor was a myth instead of a real person, which remained on the docket of this court accessible to all until 1893, when it was dismissed by the complainant therein.

A similar delay appears to have attended the filing of the bill of Elizabeth Brown. It avers the execution by her mother, Barbara (who, it is charged, died in 1883), of a deed in trust to Edwin A. McIntire to secure an indebtedness on a note to one Brouner; that in April, 1881, there was an alleged sale by the trustee at public auction at which the property was knocked down to Emma Taylor, to whom the trustee executed a deed in April, 1881 (recorded in the same month); that Emma Taylor was not a real person, and her name was used by McIntire to assist him in his fraudulent purpose to obtain the property for himself; that no deed had ever been delivered to her, and she made no claim to the lot; that Barbara Brown died shortly after the sale, wholly ignorant of the fraud perpetrated upon her, and complainant has only within the past weeks discovered the facts hereinbefore set forth as to the fraudulent sale and the deed executed in pursuance thereof.

The bill was filed on the 7th of February, 1891, nine

years and ten months after the sale and conveyance to Emma Taylor.

After the answer to McIntire had been filed to the original bill an amendment was filed making Martha McIntire a party and attacking the validity of a deed purporting to be from Barbara Brown and Emma Taylor to Martha McIntire, dated April 28, 1881, recorded April 7th, 1891, and of another deed purporting to be from Emma Taylor to Martha McIntire, dated September 6th, 1884, recorded 7th of April, 1891, which had been filed with McIntire's answer. This amended bill denounced these deeds as fraudulent, and the complainant claimed to be reinstated in the property, and for an account, &c. It also submitted interrogatories to be answered by the defendants and averred the complainants did not know of the existence of the first-named deed until the filing of McIntire's answer, and that therefore the complainant did not make the said Martha McIntire a party before.

In May a further amendment was filed averring no public sale was ever made, but the entire proceeding was fraudulent; that "Barbara Brown died in 1885, wholly ignorant of the fraud perpetrated upon her, and that complainant has only within the past week discovered the facts as to the pretended sale and the deed executed in pursuance thereof." In this amended bill there is no waiver of oath in the answer.

The defendants answered under oath and denied all incriminating charges in the bill and amended bills, and respond to the interrogatories in the amended bill propounded.

There is wanting in this bill an explanation why Barbara Brown should have neglected to institute proceedings to set aside the sale during her lifetime, if she disapproved of what was done, or why the complainant delayed so long

the assertion of her claim; nor does the daughter say when or how she discovered that Emma Taylor was a myth, or why she could not have made the discovery sooner. Her mother lived near the land till her death, and her brother, Leonard Sinnemacher, was living in April, 1881, four doors from the house, which stands on a subdivision made by the brother and recorded in his name. Nothing could have been easier than for her to have consulted with this brother as to the alleged imposition upon her rights and procure his aid in obtaining a satisfaction from McIntire for any wrongs she had received at his hands. The records disclosed the execution of the deed from Barbara Brown to E. A. McIntire from June, 1880, and of that from McIntire to Emma Taylor, conveying the land, from April, 1881. That Barbara Brown received the $400 borrowed by her on the note to Brouner described in the deed of trust is not denied, and there is nothing to show she ever paid any part of it, except by the sale of the land for that sum. That she was needing money about the time the deed in trust was given appears also from the deed of Peugh, trustee, and Barbara Brown to McIntire, recorded in October, 1880, conveying another lot to secure a note of $600 to Galliher; which facts are quite inconsistent with the brother's testimony that his sister at the time of the sale had a keg of gold in her house.

With these surrounding circumstances, notifying parties interested and summoning them to diligence in making their complaint known, there can be no doubt that supineness, instead of reasonable promptness, characterized the bringing of this suit, and that the bill contains no satisfactory explanation of that delay.

In the Ackerman case it is charged that complainant, wishing to raise some money in March, 1882, placed in

McIntire's hands for sale a small lot, which shortly afterwards he reported he had sold for $300 to Emma Taylor, to whom Mrs. Ackerman executed a deed dated 24th of April, 1882, and duly recorded; that the price was not a fair one; that McIntire paid her only $75 from the proceeds; that on information and belief she avers Emma Taylor was not a real person or the real purchaser, but that the name was used fraudulently by McIntire to enable him to obtain the property for himself, and she submits that McIntire should not be allowed to retain the property, and prays the deed to Taylor may be cancelled and that an account of rents and profits may be decreed, and for a decree directing payment of whatever may be found due. E. A. McIntire and Emma McIntire, the two original defendants, answer under oath (the oath not having been waived in the bill), denying the charges of fraud, and McIntire insisting he had settled honestly with the plaintiff.

This bill and that in the Brown case were filed the same day, and resemble each other closely in their formal parts and in many of the charges. After McIntire had answered, an amendment was made making Martha McIntire a party defendant and containing similar interrogatories, which the defendants were called on to answer, without oath, principally as to the existence of Emma Taylor, to which the McIntires answered.

This bill was filed 7th of February, 1891, eight years and eleven months after the sale and conveyance sought to be cancelled. Her deed had then been on record since April, 1882. The complainant testified she had a dispute with complainant, complaining of the smallness of the price at the time of the sale; that he then explained the matter, but that she had on the same grounds complained to McIntire ever since whenever she would meet him.

She admits she had testified in another case, about the time of the sale, that she had received $175 on the purchase; that there were taxes to a considerable amount standing against the property at the time, which were deducted from the $300; that she has lived in Washington, employed as a clerk, ever since; that she was anxious to sell the property at the time it was sold, as she then needed money, and there was some trouble about the title.

The only explanation in the bill of the delay in bringing suit is contained in the 6th paragraph in these words, "On information and belief, only recently obtained, complainant avers and charges that the name of Emma Taylor was adopted for fraudulent purposes," &c.

There can be no controversy that this bill contains no adequate disclosure of the time and manner in which she acquired the alleged information, and that it fails to furnish any explanation why it could not have been obtained sooner. The amended bills in this and the Brown case, averring the complainants in each case had learned of the two unrecorded deeds only upon the filing of McIntire's answer to the originals of these bills, do not remove this objection, as the bills were not filed to set aside those deeds, and they are only referred to in McIntire's answer as evidence to meet the main charges in the original bill.

If the exacting requirements of a successful reply to the objection of laches as expounded in the cases I have quoted are ever to apply, it would be in such a case as this.

In the Southey bill the plaintiffs claim as heirs-at-law of Cornelius Cohan; and aver that E. A. McIntire, claiming to act under a trust deed from Streb and wife (recorded in 1872), conveyed to one Swartzell, in 1876, the lot

described, in pursuance of a pretended sale made for an alleged default in payment of notes secured by the deed; "that complainants have only recently discovered that the said pretended sale was a deliberate fraud perpetrated by said McIntire on complainants' father, of which he was wholly ignorant during his lifetime, the facts and circumstances of said fraud, which have only within the past ten days been discovered, being set forth in the succeeding paragraphs of the bill." The bill then avers on information and belief that at the time of the sale the whole indebtedness secured by the deed had been paid, or, if not entirely paid off, that McIntire held the unpaid notes, and was therefore disqualified as trustee to sell for their default; that Swartzell was a fictitious purchaser, used by McIntire to cloak his own fraud and allow him to purchase at his own sale, and that McIntire took possession at once of the property and has held it ever since; that in May, 1882, Swartzell, in ignorance of the fraud, conveyed the property to one Emma Taylor (a fictitious person), without consideration; that in May, 1884, McIntire fraudulently caused a deed to be executed purported to be signed by Taylor, conveying the property to Martha McIntire, and that said deed was without consideration, and that all said deeds, if not void for other reasons, are void because there is no such person as Emma Taylor. This bill also required answers from the defendants, the McIntires, without waiver of oath.

The defendants answered on oath denying all the charges of fraud made in the bill.

The alleged fraudulent conveyance to Swartzell was executed in December, 1876. This bill was filed in March, 1891, fourteen years and three months afterwards. That it contains no sufficient statement of the time and manner of the discovery of the alleged fraud and no ex-

planation or excuse why the discovery was not made sooner is apparent; and in view of the numerous conveyances offered by both parties and of all the other facts imputing notice to those entitled to complain of any fraud in the sales, it seems impossible to believe the parties at that time thought they had any just grounds for complaint. The testimony of John Southey, the owner of the property at the time of the sale, who is the husband of one of the complainants and brother-in-law of the others, that immediately after the sale he complained to McIntire that he had no right to sell, and that he had frequently done so since that time, and would have filed a bill then for an injunction if he had been in funds, is conclusive of the question.

The last bill of the series is that brought by Laura Haynes and her husband against Edwin A. McIntire alone.

It charges that being residents of South Carolina, on the 7th of September, 1881, they conveyed to defendant E. A. McIntire lot 31, in square 388, in this city, to secure the payment of a promissory note for $650 made to one Galliher, defendant being then their agent to collect the rents of the property; that in August, 1882, the defendant pretended to sell and convey the property to Emma Taylor for $500; that in May, 1883, a deed was recorded from Taylor to Alfred Brown, conveying the property for $1,100 in cash and deferred notes, all of which had been paid to defendant and appropriated by him to his own use. In paragraph 7 the bill says "that complainants have only recently discovered that the said pretended sale and deed to Taylor was a fraud perpetrated by McIntire upon complainants, who, being absent from Washington city, had no means of heretofore discovering said frauds;" "that there has never been such a person as Emma

Taylor, and she was an invention of defendant to assist him in his fraud," the bill concluding with a prayer that defendant may answer the interrogatories therein, and that defendant may be required to account, &c.

An amendment to the bill filed in July, 1891, avers there was no public sale; but nothing is said as to when this information came to complainants' notice.

The defendant answers the interrogatories on oath, denying all charges of fraud or impropriety in the matter.

The sale took place and the deed bears date in August, 1882, and the bill was not filed until May 12, 1891, eight years and nine months afterwards. The correspondence given in evidence between the parties before and after the sale, with the records of the deeds, certainly indicate that the exercise of proper diligence on the part of the complainants would have enabled them to institute this suit with greater justice to themselves, as well as to the defendant, at least eight years ago, and their failure to make any move in this direction during all this time under the circumstances, without any plausible excuse for their delay, must be considered such culpable laches as disentitles them to be heard in a court of equity.

There have been cases where, upon proper averment of the recent discovery of hitherto unknown facts, with satisfactory explanation of the reason why such discovery had been so long delayed, courts of equity have listened to appeals for relief after longer delays than are here shown; but those were cases where the evidence rested upon incontestible records or where from other considerations the dangers which are almost inseparable from long delays did not menace the just rights of defendants. To lend too willing an ear to attempt to break up settlements long since considered final upon vague charges of fraud to be supported only upon the precarious testimony of

ignorant witnesses whose memory must naturally become weakened by the lapse of time would be to encourage a general attack upon the possessions of the community. At the least, the claimants who seek this extraordinary intervention should observe in the presentation of their case the rules so imperatively asserted by repeated decisions of the highest courts, which have also declared that they will hold such claimants to the stringent rules of pleading and evidence.

One prominent ground upon which the courts base their refusal to listen to such tardy complaints is the danger that the lapse of time may have made "some change in the condition or relation of the property or the parties."

(145 U. S., 373, Galliher *vs.* Cadwell.)

That such changes have occurred in the condition of the different properties involved in these causes is apparent.

Between 1876 and the present time there has been a marked increase in the values of landed property in Washington; and increase in the values is a circumstance greatly relied on by the courts when they are approached by claimants shown to have acquiesced in the occupation of property by others who during the intervening time have been regularly paying the taxes and other charges on the property without remonstrance by those now claiming title, and presenting their claims only after such great increase in value has appeared, and after the occcupants have expended money in improvements still further increasing its value.

(148 U. S., 370, Johnson *vs.* Standard Mining Co.)

These conditions appear with respect to each of the properties, to a greater or less degree.

The present owner of the Hayne property is Alfred Brown, who purchased in good faith, paid the purchase-money, and has been in possession ever since under a deed from Emma Taylor. This his muniment of title is now denounced, after having been on record for more than eleven years, as conveying to the grantee no title whatever. A prompt complaint by the owners of the alleged misconduct of McIntire would at least have intercepted the payment of the numerous deferred payments by Brown (who is also a man of color) if it would not have resulted in clearly showing either that those charges were incorrect or in establishing them while the witnesses were alive and the facts fresh in their memory. In the same predicament Joseph Forrest may be compelled to stand as another of the grantees of Emma Taylor, for his title must depend upon hers; and such may be the painful situation of all other holders of property who claim through her.

10 Wheaton, 152, Elendorf *vs.* Taylor.

2 Sch. & Lef., 636, Hovenden *vs.* Lord Annesly.

In speaking of changes in the condition of the parties the Supreme Court specially refers to the chances of the death of witnesses during such protracted delays in these words: "As the lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and the other means of judicial proof."

(99 U. S., Golden *vs.* Kimmell.)

Death has been quite as busy as usual with the actors and witnesses in these transactions. Of the principals, Thomas Pryor and Barbara Brown and one of the McIntires have died. Of witnesses, William Helmick, the justice; Caldwell, the auctioneer; John E. Kendall, Fred.

W. Jones, and Cathcart Taylor have died. Every one of these witnesses, it is insisted by the defendants, would have given important testimony in their favor. How they might have testified I cannot determine, but certainly most of them had the qualifications to give valuable evidence as to many of the matters in controversy—Helmick more particularly as to the signatures and the execution of the deeds; the auctioneer as to the writings claimed to have been made by him and to the sales. With respect to the latter, Kendall would also have been a witness, and perhaps all of them with respect to the existence or identity of Emma Taylor. The effect of the lapse of time on the "memory of witnesses" is well illustrated in the contradictory testimony of Peugh, who, it is stated, has died since he testified last in the case. The liability to the disappearance of papers with the efflux of time is another important consideration, and an instance of this is shown in the destruction by Caldwell's widow of his important record of auction sales.

Another difficulty that is frequently developed or increased by lapse of time is the impossibility of giving complete or proper relief where the courts are inclined to interfere, or, as it is usually expressed, to do full justice to the parties that the court may rectify the wrong (as the Supreme Court expresses it) "with a feeling of certainty that they are not committing another and perhaps greater mistake."

(7 Gill, 363, Clabaugh *vs.* Byers.)

The hardship of ejecting such a purchaser as Alfred Brown has been adverted to; but perhaps a greater trouble would arise if the readjustment prayed for of the claims of the *cestuis que trusts.*, who have received their money and gone their way, should be attempted, and an

accounting directed concerning the rents received or recoverable in the interim, and an accommodation of the counter-charges for taxes, betterments, or improvements that would be claimed if any such proceedings were to be attempted after such a lapse of time and the disappearance of witnesses, past and prospective.

As the courts have declared that in suits of this description they will not relax the rules of pleading and evidence, it is proper to notice that even if the complainants were otherwise free from objections and their averments were established against the other parties no decree could be granted aginst Emma Taylor, as no decree *pro confesso* after publication was obtained against her.

I think it proper to add that I am not to be understood as expressing any opinion as to the charges or defenses presented by the opposing parties upon the facts, as the right to pass upon these rival contentions is denied me, under the circumstances, under the controlling decisions of the highest courts.

For these reasons I shall sign a decree in each case dismissing the bill.

A. B. HAGNER.

Opinion of Justice Hagner upon Re-argument of these Cases.

During the course of the argument of these causes the defendants' counsel asked leave to file an amended answer or pleas presenting specially the question of laches. The court declined to allow this course to be taken, upon the ground, expressly so declared at the time, that no such pleading was necessary, as the court, *mero motu*, could notice that defense.

At the close of the whole argument the court, for the special purpose of calling their attention to the question of laches, asked the counsel what they had to say upon that subject. The defendant's counsel reminded the court of his application and of the grounds upon which it had been overruled, while the complainants' counsel insisted the defense was not applicable because of the recent discovery of some of the deeds offered in evidence. The justice then informed counsel he desired to receive any further arguments they might wish to submit on briefs. Each side accordingly filed supplemental arguments, consisting chiefly of comments on the testimony, but those of the defendants referred at some length to the question of laches, while the complainants' counsel confined themselves almost entirely to a discussion of the testimony.

As my examination of the cases progressed I became convinced the question of laches should be the controlling ground for my decision, and the opinion was framed accordingly.

For reasons I believed should be absolutely controlling with me, I purposely refrained from the expression in the opinion of my convictions as to the facts, except so far as they bore upon the question of laches, believing it was my duty to decide it as I did, upon that question alone.

After the delivery of the judgment the complainants' counsel expressed their desire for a rehearing upon the question of laches, and at my suggestion filed an application, which was promptly granted. As the order was altogether within the discretion of the court, it was confined to the question of laches; and being convinced an argument on notes would be more satisfactory and instructive, it was accordingly ordered.

If it had been intimated at the time that an oral argument was considered preferable, there would probably

have been no difficulty in complying with the intimation, as had been the case with respect to every request or suggestion on the part of complainants' counsel in the whole conduct of the cases. The intimation that, as a general rule, a re-argument is made *ore tenus* is incorrect. It is a matter to be regulated by the court in its discretion, and in my experience re-arguments have usually been presented on notes.

The time limited for the filing of the new argument accorded with that suggested by complainants' counsel, and it was afterwards extended on their request. The extent and thoroughness of the new volume submitted to the court is not evincive of a lack of time for examination or preparation.

No lawyer can deny the existence of the irrefragable rules of equity that there must be conscience, good faith, and reasonable diligence to call into action the powers of the court, and that where these are wanting the court does nothing; that it has been a recognized doctrine of courts of equity, from the very beginning of their jurisdiction, to withhold relief from those who have delayed for an unreasonable length of time in the assertion of their claims; that where unreasonable delay appears the party suing must specifically set forth the impediments to an earlier prosecution, and that the excuses presented must be satisfactory to the court.

Wherever the court becomes convinced from examination of the pleadings and evidence of the existence of what may properly be called laches, unexplained to its satisfaction, these rules should apply as absolutely as the statute of limitations applies at law, and equally, without respect to any alleged hardship of the case. If in an action at law on a promissory note the defendant pleads the bar of that statute and the defense is not impaired by

the setting up of a new promise, the court does not pause to listen to testimony to show that the defendant had behaved ungratefully about the transaction or that he bore a bad character. So, if in a suit upon a verbal promise to pay the debt of another the defendant relies upon the provision of the statute of frauds invalidating such a promise, it would be useless for the plaintiff to attempt to show the defendant had pledged his honor to pay the debt or that the plaintiff had been greatly injured by his bad faith. The court would promptly sustain the defense in each case, because the principles of the law imperatively require the defense should be sustained.

Why should not the same principle hold in the application of the equity rule respecting laches?

The court examines the facts to ascertain, 1st, whether there had been culpable delay in bringing the suit, and, 2d, whether a satisfactory explanation and excuse for such delay appears in the case before it, since each case must stand upon its own circumstances; and where it has arrived at the conviction that such unexplained laches does appear, then, in the language of the Supreme Court in Hammond *v.* Hopkins, the defense of laches "imposes an insuperable bar to contention upon the subject." There is no longer room for disputation as to the weight of this or that fact or the comparative value of the testimony of different witnesses, and the reiterated denunciation of the opposing witnesses and the most positive assertions of the personal beliefs of counsel as to the excellence of their own witnesses and the bad character of those who differ from them must be equally ineffectual to raise suce a contention.

Whether the witnesses called by the parties to testify as to the case at large are good or bad cannot affect the decision as to the unexplained laches after the court has decided they are present in the case.

After such a decision, to enter upon a particular examination of the truth of the averments of fraud set forth by one party and denied by the other would be but waste of time.

It seems to be evincive of a distrust by the court of the existence and strength of the rule and almost an apology for its existence. As though he were to be moved by objurgations against the witnesses of the defendants and the appeals to a court of conscience to avenge the frauds whose existence has been alleged, the judge is besought to travel through the record for no purpose unless it be to apologize for enforcing an unquestionable rule of the equity law. If the court has decided that a case of unexplained laches is presented, its plain duty is to dismiss the bill and to hesitate to perform that duty would be inexcusable neglect of its own ancient and well-founded principles. In accordance with this idea is the practice, frequently pursued of late years, to prevent the delay and expense of testimony that would be of no avail by deciding the question of laches upon demurrer to the bill, as was done in Lansdale *v.* Smith, 106 U. S., 394, and has been followed in numerous cases, though doubtless against the earnest arguments of counsel for the complainants in those cases.

To pursue a contrary course would be worse than useless in its influence. It would unquestionably be in opposition to that other principle, that it is the interest of the Republic that litigation of this character should be discouraged rather than stimulated; and if this wholesale doctrine is to be recognized anywhere it should pre-eminently be applied in this jurisdiction, where irregularities in real-estate proceedings were frequent in remote times and where the disposition to bring speculative suits is unfortunately too common.

If those contemplating the institution of suits involving the opening and re-examination of ancient settlements should come to appreciate that the first effort of the courts will be to ascertain, from a careful examination of the case, whether an unreasonable and unexplained delay is manifest, and that when a positive determination to that effect has been arrived at it "imposes an insuperable bar to further contention in the case," there would be more hesitation in hazarding such enormous costs as the plaintiffs' brief on the re-argument informs us have already been incurred on the part of these impoverished plaintiffs.

Whereas if it is to be understood, on the other hand, that, although the court shall have arrived at such a determination, the chance still exists that under the influence of an abler presentation of the plaintiffs' claims and of the vehement denunciation of the defendants' conduct the court, through pity and indignation, may be induced to withhold the application of those settled rules, then hopes are held out that will soon bear evil fruit.

After the Supreme Court had declared its conviction that inexcusable laches appeared in Hammond *v.* Hopkins, which disentitled the complainants to recover, would they have listened to an argument, however earnest, to prove the facts could be shown to be so atrocious that a chancery court ought not to tolerate the escape of the perpetrators with their ill-gotten spoils, and that chancellors who love justice should not allow iniquity to succeed, despite of the technical rules? That court answered such a question in the negative when it declared that the defense of laches "interposed an insuperable bar to contention on the subject."

The complainants' counsel in the re-argument contest the correctness of the court's decision as to the question

of laches and support their contention by criticisms upon the cases cited in the opinion, which they insist are not applicable or have been misconstrued by the court, and also by the citation of a number of cases not referred to in the opinion.

With respect to the first class of cases, the court has re-examined them in the light of those criticisms and sees no reason to change its views as to their applicability or authority.

One assertion made by the counsel with great positiveness, and repeated more than once in the re-argument, is that no cases can be found in which the courts of equity have ever sustained the defense of laches (where the controversy related to real estate) unless the delay after the discovery of the fraud has been more than twenty years. Again, the counsel confidently assert that the reports of the Supreme Court will be searched in vain for a contrary doctrine, and that "no case can be found in those reports in which the bill was dismissed on the ground of laches where actual fraud was charged against a trustee of real estate and if the bill was filed within twenty years after discovery of the fraud."

And in discussing the case of Hammond *v.* Hopkins they again assert that "the delay to complain was over twenty years when the statutory bar was completed."

The counsel have assembled unnecessary conditions in the presentation of their propositions; but, taking them all as requisite to an accurate definition, I think it would not be difficult to find many cases (not one alone) where the courts have dismissed such bills upon the ground of laches which were filed within less than twenty years. In Hammond *v.* Hopkins the sale by the trustee took place on the 10th of May, 1864, and the bill was filed April 8th, 1884, one month less than the twenty years,

and therefore inside of the legal term when a right of entry would be barred at law. That bill also prayed for a decree involving the setting aside of deeds made and recorded still subsequent to the time of the sale, settlements in the orphans' court in 1865, and sales running down to December, 1875, and decrees passed in 1877, and the bill alleged and the witnesses swore that many most important facts connected with the sale were not discovered by complainants until February, 1884.

In Harwood *v.* R.R. Co., 17 Wallace, 78, the bill was filed in December, 1865, to vacate a decree passed in 1860 for the foreclosure of a mortgage upon all the property of the railroad, alleging ignorance of the fraud charged until 1865 and explaining the reason why such ignorance existed. On demurrer, the court below dismissed the bill, and this action was affirmed by the Supreme Court upon the express ground that the delay of five years in instituting the suit was too great, and that no sufficient excuse was given for it in the bill. The counsel are in error in asserting the bill was not dismissed because of laches. The language of the report is directly to the contrary, as is noticed in 145 U. S. 372, Galliher *v.* Cadwell, although the delay was only for five years.

It is true the Supreme Court pointed out the serious defect in the proceedings in the neglect to introduce as a party the person who had made the sale sought to be vacated, just as this court in its opinion in the present case remarked upon the failure by the plaintiff to procure an order of publication and a decree *pro confesso* against Emma Taylor, a grantor and grantee, who was sued as a non-resident. The complainants in the re-argument seem to consider this an entirely unimportant omission, inasmuch as they are satisfied no such person exists; but whether Emma Taylor's appearance was obtainable was a

fact to be ascertained according to the rules of equity practiced, which require a publication, and it is not sufficient that the complainants now inform the court such a proceeding would have been fruitless. The other side has the same right to its opinion, and it denies this contention of the complainants. We have seen (in 7 Howard, 829, Stearns *v.* Page), the Supreme Court said, "they will hold the complainant to stringent rules of pleading and evidence and require him to make out a clear case," and the assertion of counsel that the omission is unimportant cannot change the rules of the court.

The court could not concede, except because of a stolid purpose to disbelieve every witness on the part of the defendants, that the non-existence of Emma Taylor is so conclusively established by the testimony that the complainants' assumption of there being no such person is justifiable. Eight witnesses testify to seeing her about McIntire's office, as large a number probably as either complainant adduced to support any assertion on that side; and such a concession would be singularly at variance with the admission of counsel, in the first brief, at page 7, in these words: "Again, while he puts upon the stand persons who saw her (Emma Taylor) prior to 1880, which, of course, was easy enough to do, since there seems no doubt that at that time a young woman by the name of Taylor, whether for the purpose of flirting or otherwise, made occasional calls upon him at his office (for they were so intimate together that the clerks used to joke about it and say he was going to marry her, &c.)," and with that was probably a more explicit admission to the same effect in his oral argument. It is not easy to understand how the court is to conclude under such circumstances that a person who was so distinctly in evidence in 1880 must now be assumed beyond all possible

doubt to be a mere myth, and never to have existed after 1880, or indeed at any other time, as is now contended. Our country is very extensive and the world is still larger, and there is no more reason shown why Emma Taylor's present whereabouts should be known to the persons concerned in this suit than their present whereabouts should be known to her.

The court of appeals in the recent case of Walter and Mackey, trustees, *v.* Slater enforced this principle by refusing to recognize the authority of trustees in their own names to institute suits (which were characterized by that court as apparently vexatious) in behalf of numbers of claimants, notwithstanding such form of prosecution would have been highly convenient and economical to the plaintiffs concerned.

Besides the cases cited by the court in its opinion, it may be proper to refer to some others in opposition to this contention in the re-argument. In Godden *v.* Kimmel, 99 U. S. 201, a deed had been executed in October, 1857, conveying real and personal estate to a trustee, which, in February, 1871, was attacked as fraudulent by the creditors of the grantors. The Supreme Court dismissed the bill because of the delay of less than fourteen years, unaccompanied by any satisfactory explanation of the laches.

And in Richards *v.* Mackall, 124 U. S., p. 186, the opinion says: "The present suit was brought by Brooke Mackall, Jr., on the 11th of April, 1882, nearly twelve years after Richards' purchase, for the purpose of having the sale of June 13, 1870, the conveyance of October 17, 1870, and all transfers depending thereon adjudged to be void and of no effect." The court in its opinion, on page 188, after stating the general principles applicable to the subject, says: "These principles, applied to the present

case, lead to a reversal upon the ground that the appellant, upon his own showing, has been guilty of gross laches in applying for relief." And in the concluding sentences it says: "In our judgment, he is not in a position to claim the interference of a court of equity. For that reason alone the judgment must be reversed and the cause remanded, with directions to dismiss the bill." The Supreme Court there declined to enter upon an examination of the facts, except so far as they bore upon the question of laches (precisely as this court did in the case at bar), not having been taught by the counsel that they had no right to adopt such a course.

It is very evident the counsel have not exhibited their usual accuracy in their assertion of the alleged principle I have been examining.

The complainants' counsel in the re-argument have referred to a large number of cases, thirty or forty in number, not cited in the opinion of the court, for the purpose of showing the court's view of the question of laches is not supported by the authorities, and have quoted quite extensively from the opinion in several of those cases. This number might have been increased almost indefinitely, for the decisions on this interesting point are almost unlimited. But interesting and instructive as are the extracts, it is well settled that each case must be decided upon its own facts and circumstances, and hence a court can no more with safety rely upon the conclusions of other tribunals in such cases than upon the positive contentions of the counsel on one side or the other of the pending case. Most of these cases are quite familiar to the court. A considerable number of them were referred to in Hammond *v.* Hopkins, and, so far as they are inconsistent with that case, may be regarded as overruled for the present inquiry. The Supreme Court

in the latter case commented particularly upon Michou *v.* Girot, 4 Howard, from which counsel have quoted liberally in their brief, and the opinion of Chief Justice Fuller sustaining the defense of laches disregards the utterances in the former case. The question before me is not a new one, and it is not now engaging my attention for the first time. As counsel and while sitting as judge in some of the cases cited, I have had repeated opportunities to weigh the force of most of the citations, and I conceive that nothing in the presentation of them by the counsel in their argument can affect the force of the rulings in the later decisions of the Supreme Court. If any of the cases cited are inconsistent with those later decisions they are to be regarded as overruled.

The counsel preface their presentation of this large number of cases by the statement that all they may say with reference to them in the re-argument is advanced upon the assumption that they have fully proved the frauds alleged, and that if the court, after the presentation of the facts disclosed by the evidence, is not convinced "that such is the case, then the discussion of the question of laches by them will be useless, since every argument they shall make will be based upon that assumption;" and they further "concede, if they have not proved the charges of fraud in all their enormity, the bills should be dismissed without ceremony." In view of these statements, more than once repeated, and of the request of the counsel for the defendants in his brief on this re-argument, I think it proper the court should so far depart from its original purpose not to express an opinion upon the facts in this case (except so far as they bear upon the question of laches) as to state that if my original purpose, before determining to confine the opinion to the question of laches alone, had been adhered

to, I had intended in expressing my views as to the sufficiency of the proof to insert in the opinion these words of the Chief Justice, from page 272 of 143 U. S., Hammond *v.* Hopkins: "I think the complainants failed to make out their charges of fraud, and that, apart from that, the evidence of laches imposed an insuperable bar to contention upon this subject."

In examining the charges of fraud, so frequently reiterated in these bills, the court was bound to apply to their consideration the cardinal rules of evidence applicable to the subject, and no argument can cause the court to lose sight of those rules where charges of fraud are under examination. The general term, in 2 Mackey, 563, Clark *v.* Krouse, adopts the principles of innumerable cases on the subject; that the law does not presume fraud; that it must be established by evidence; that the difficulty of establishing the fraudulent intention furnishes no justification for the judge to presume a fraudulent intent from his own vague suspicions of the nature and character of the transaction; that where the attempt is made to set aside deeds as fraudulent the principle prevails that they are *prima facie* evidence of the verity of their contents, and where they are supported by the positive answer of the defendants the testimony to set them aside ought to be so clear and explicit as to leave scarce a doubt on the subject.

2 Maryland, 375, Farringer *v.* Ramsay.

19 do., 176, Moore *v.* Blanheim.

In 6 Peters, 716, U. S. *v.* Arredondo, the Supreme Court approves the language of Justice Washington in Conrad *v.* Nicoll, 4 Peters, 295, and declares it will be governed by the rules laid down by the distinguished judge who delivered the opinion in that case as follows:

Says the court in 6 Peters: "He laid down three rules which were incontrovertible:

"1. That actual fraud is not to be presumed, but ought to be proved by the party who alleges it.

"2. If the motive and design of an act may be traced to an honest and legitimate source equally as to a corrupt one, the former ought to be preferred. This is but a corollary to the preceding principle.

"3. If the person against whom fraud is alleged should be proved to have been guilty of it in any number of instances, still, if the particular act sought to be avoided be not shown to be tainted with fraud, it cannot be affected by those other frauds unless in some way or other it be connected with or form a part of them."

A further reason for caution in granting such relief exists in the present cases because of the character of the charges against the defendant Edwin A. McIntire.

Besides the allegations of breach of trust, embezzlement of the trust funds, and general unfaithfulness in the performance of his duties, he is especially charged with falsehood, perjury, and subornation of perjury, forgery, and the procurement of forgery, including one of the gravest offences known to the law—the forgery of deeds.

Even in a civil suit, where the fact to be proved involves moral delinquency, the evidence should be so strong as to exclude the presumption of innocence, for innocence is to be presumed until guilt is proved. 8 Maryland, 547, Corner *v.* Pendleton. In 2 Barn. & Ald., 386, Rex *v.* Twyning, where the legitimacy of a child depended upon the question whether the mother's first husband was dead at the time of her second marriage, the court said: "This is a case of conflicting presumptions, and the question is which is to prevail. The law presumes the continuance of life for seven years, but it also

presumes against the commission of crime, and that, even in civil cases, until the contrary is proved. If the female had been indicted for bigamy the evidence would clearly not be sufficient."

If vehement denunciation could supply the place of proof, the contention of the complainants might prevail; but the courts are charged with the duty of remaining uninfluenced by any consideration except the legal proof before them. In Hammond *v.* Hopkins, 143 U. S., 230, the court listened to an arraignment of the trustee whose conduct was denounced from the lips of our ablest counsel in words of wonderful power. The picture thus presented to the court was of a dying man commiting into the hands of his brother, his partner for years, the custody of his whole estate and the guardianship of his infant children, and of the brother completely disregarding these sacred duties; and, finally, under wholly unnecessary circumstances, as trustee, offering for sale a large landed property in this city, which has since become of enormous value, at the most unpropitious period—while the civil war was flagrant—and at a time when it was said the roar of the hostile cannon might have been heard in this city above the voice of the auctioneer, returning as bidder for a small price a man of straw, who bought in the lots for the trustee, by whom they were conveyed to the purchaser ten days afterwards, and then reconveyed on the same day to the trustee himself; that the entire proceedings of the trustee constituted a fraudulently concocted scheme to cheat the children of his deceased brother; that in his capacity of executor and guardian he had passed fraudulent accounts, from time to time, during the minority of his wards; that he had by fraud procured the execution to himself by one of the sons after he had attained age (who was mentally enfeebled by drink) of a convey-

ance of his interest in his father's estate, to which, under the command and direction of the trustee, he had signed his wife's name, and that the trustee by means of fraud had obtained the certificate of acknowledgement of that deed by two justices of the peace. The bill, filed one month inside the twenty years after the sale, declared the plaintiffs had discovered many of the most important of these facts only within a few weeks preceding, and the circumstances under which they were discovered were set forth at length in the bill, which also averred the poverty of all their father's children, while their uncle "had dropped off gorged from a scheme which had left them flaccid and drain'd."

To all these fervid appeals the Supreme Court doubtless listened attentively, and then declared, after recapitulating the facts as they found them actually established by the proof, that "the complainants had failed to make out their charge of fraud" (p. 272), notwithstanding the assurance of the plaintiffs' counsel that no man could doubt it was the most atrocious case that ever disgraced the records of a court of conscience, and notwithstanding the court in general term had expressed the opinion that the purchase made by the trustee at his own sale was fraudulent and should be vacated in favor of the minor wards.

Without intending to depart from the grounds of my former decision, I think it proper to say I cannot understand how counsel could expect a decree in conformity with the prayer of either of these several bills if they stood upon their own respective allegations and proofs alone, as in the Pryor case, for example, if the only matters presented for the consideration of the court were the pleadings and facts naturally connected with the sale and conveyance to Jenison in that particular case, and the

same may be said of each of the other cases; but the counsel have, in the first place, insisted the court is justified in the examination of each of the five cases, and, before it shall have decided upon either case, to consider the existence of and the charges in the four other suits involving similar accusations, and that this aggregation of suits is to be regarded as a circumstance tending powerfully to establish the contentions in each case in turn. I do not believe the law is so unreasonable and unjust as to tolerate such a contention. It is true that in certain cases (where the question of *scienter* is of importance, as in indictments for passing counterfeit money), it is justifiable, in proof of the *scienter*, to show that the offender has been guilty of passing counterfeit money in other cases, but not merely that he had been accused or charged with passing such money.

This exception is probably allowed as a mode of proving the *scienter*, since an honest clergyman, having in his pockets the collections of the church for the previous Sunday, might innocently pass a counterfeit coin; and the principle has been extended to accusations of fraud in civil controversies where guilty knowledge or the motive of the act under examination is sought to be ascertained.

And for this purpose fraudulent acts committed by the accused similar in appearance to that under examination may be shown in evidence to show such guilty knowledge.

But the principle of those cases cannot be extended so as to allow testimony to be given of other contemporaneous charges not yet established. Could it be possible that in the Howgate case, recently on trial in the criminal court, the district attorney, by way of proving the prisoner's guilt in the case on trial, could have been permitted to call attention to the fact that there were half a dozen indictments of similar charges pending against

the prisoner? Even where there have been convictions in other cases the law is plain that neither of these convictions can be noticed at all, except under strict and particular limitations. In 6 Peters, 716, U. S. *vs.* Arrendondo (*supra*), the Supreme Court, as we have seen, adopts the opinion of Justice Washington in 4 Peters, 295. The judge was there speaking of a case where the person against whom fraud is alleged has been proved to have been guilty of it in any number of instances, not simply charged with such other frauds ; and he declares it is still required that the particular act sought to be avoided should be shown to be tainted with fraud before it can be affected by such other frauds already "proved," and then only, if in some way it be connected with or form a part of them. To the same effect is 23rd Howard, 172. The contention of the counsel would justify the court, in the trial of case number one of these five suits, to find that case was sufficiently proved by taking into account the fact that accusations in the same direction had been made (though not yet passed upon by the court) in the four other cases. In the same way case number two would be proved by referring to the accusations made in case number one and in the remaining cases ; and so in turn each might be held to be established by these mere accusations, thus arguing in a vicious circle, which would admit accusations in other cases to stand as the equivalent of proof in the particular case. Such is not the law.

But the chief reliance of complainants' counsel to establish their contentions in these cases is built upon the alleged bad character of the McIntires and in their assumed perjuries and forgeries ; and, invoking the doctrine of the Santissima Trinidad, they insist the court should decide against the truth of whatever either of those witnesses may have stated in the course of the

examination, for unless those witnesses are discredited plainly the complainants could not sustain either case. That a large part of this incriminating testimony is obnoxious to the exceptions taken for irrelevancy, and because of its being mere hearsay and inadmissible upon other grounds, I am well satisfied; but I shall not undertake the enormous labor of examining the exceptions here, nor shall I pass upon the counter-charge of defendants as to the motive of these suits and their promoters.

So far as the effort to impeach the testimony of those witnesses depends upon the alleged proof of crime, it is hardly necessary to say such evidence is never receivable. Lord Holt said a great many years ago, in 4 St. Trials, "Look, ye! you may bring witnesses to give an account of the general tenor of this witness' conversation, but you do not think, sure, that we will try at this time whether he be guilty of robbery."

With respect to the attempt to impeach their testimony, it is observable that no witness is brought from the large population of this District to testify that either is unworthy of belief and that they would not credit them on their oath, although this is the most usual and perhaps the fairest way of impeaching a witness. Of course, there exists the practice to impeach the witness by contradicting his statements and showing that what he testified was at variance with what other witnesses had said on the same subject; but it remains that what those other witnesses said is also at variance with what the McIntires have testified; and there must be something shown as to the character for veracity ascribed to the opposing witnesses and to the nature of the contradictions themselves to compel the court always to believe the one party and disbelieve the other, for witnesses testifying to transactions as remote as these may very naturally make

misstatements without deserving unmeasured denunciation as perjurers. The tables might have been turned against witnesses on the other side. Mary Pryor signed and swore to the original bill in this case, in which, among other things, after stating she had conferred with Jenison, her codefendant, she swears he informed her he did not know the property had been sold under the trust or conveyed to him or that it stood in his name, and that he had received no consideration whatever for the execution of the deed to Emma Taylor. It cannot be contended this statement, sworn to and signed by Mary Pryor, was true. It is proved in the case beyond all question and admitted by Jenison that he had given written directions to McIntire to sell the land; that he knew of the execution of the deed to himself, and that he and his wife had executed a deed of trust of the same property about the same time. A similar flood of invective directed against the complainant Pryor would represent her as having come into the temple of justice with a lie in her mouth, and that these false charges were attempted to be supported, with all their many inconsistencies and improbabilities, by testimony equally unreliable.

The case set forth in the Pryor bill seems so wholly improbable that it is difficult to suppose its prosecution would have been persevered in, except for the supposed aid of the other cases and the furious and unceasing denunciation of the McIntires upon every point. For years before Edwin McIntire became connected with the property and while under the management of Brainard H. Warner it had been conveyed to Henry McIntire as trustee. This colored woman and her husband had fallen into arrears and had been unable to keep up the interest on the debt of $500 then due on the lot. Their affairs had become so hopeless that they had signed a deed con-

veying the whole property to Henry McIntire's sister for a nominal consideration, but the grantee, unwilling to shoulder the debt with the taxes and charges that had been incurred, refused to claim under the deed. Upon the direct written order of Jenison to Edwin A. McIntire a sale took place. Mary Pryor says that in accordance with a previous agreement with McIntire the lot was struck off to her husband for $700, for her use, by the auctioneer.

There is no pretense that either of the Pryors had received any money in the meantime to enable them to pay any part of this large sum, although they had been unable to keep down the interest on the smaller debt, or that either of them ever signed a note or any scrap of paper evidencing the alleged sale, or that either ever paid a cent on the alleged purchase, or that they had at the time money enough to defray the costs of the advertisement or to pay commissions of the trustees. McIntire was under no necessity to make so stupid an arrangement. No possible reason is assigned why Edwin McIntire, after having received the positive instructions of Jenison to sell, should have been willing to run the risk of so absurd and abortive a sale as the complainant pretends took place, for since the District was formed no sale was ever made marked with such absurdity or with such a total absence of anything to establish its probability. Pryor and his wife remained in possession of the lot for some years, paying rent to McIntire at the rate of $6 a month, which she said was to go on the principal, under the agreement, in case they should be able to pay off the purchase-money. In the meantime interest on the $700, with the taxes and repairs, should almost have equalled the rent, and (according to her story) not less than twenty years would have elapsed before they could have paid the

debt under this alleged arrangement even if they had been prompt and had acquired the ability to pay. To believe that so unnecessary and preposterous a bargain was actually made involves too serious a stretch of human credulity. Finally, at the end of a few years, without an expression of dissatisfaction or remonstrance by husband or wife, they surrendered the key to McIntire, left the premises, and moved to a house near at hand, where she still lives, and in silence saw houses built upon the lot, and during all this interval no word of complaint was heard from them, unless we are to believe her testimony that soon after the sale, at a time when she had nothing on earth to complain of (according to her own statement), she met Mr. McIntire in Judiciary square and expressed some unexplained dissatisfaction with his proceedings. Her dissatisfaction could not have been with the result of the sale, for her present contention is that she then thought the lot had been struck off to her husband; nor with the amount of the purchase-money, for the contention is that it was worth more than $800; or with the terms of payment, for they were lenient beyond all precedent; but even if her story in this particular be true, it shows she had knowledge of something wrong ten years before she brought this suit. Her charge as to the purchase by Pryor is attempted to be supported by the testimony of witnesses who profess to remember hearing the announcement of Pryor as purchaser, one at least of them from a position where they could scarcely have heard the bidding.

Among the witnesses who remember that so many years ago they heard the proclamation of a purchaser who had not a cent in the world to pay for what he bought are some negro girls, who were children of 7 or 9 years of age at the time of the sale. The common experience of

individuals is to be applied in judging of the value of such statements, and to me it seems most improbable, supposing any negro girls of such ages had been present at a sale of lands within the last month, that one in a dozen of them could be found to-day to tell what the sale was about or to give a reliable account of anything that did occur. That grown persons, after such a lapse of time, would remember the details or particulars of a transaction in which they had no particular interest is most improbable. If it were certified to me that since the first argument of this case a valuable property had been set up at public sale and knocked off to a purchaser, and that a person living three doors off, accustomed from time to time, though not regularly, to read as most persons do the advertisements of sales in the newspapers, had known nothing whatever of the sale until months after it had taken place I should be prepared to give it credence, since it would correspond with personal experience. How vehemently one possessed of only a part of the remarkable redundancy of invective of the counsel for the complainants could denounce the utter unreliability of Mary Pryor and her whole case can readily be imagined, and how naturally on the conclusion of such a tirade (adopting the idea of counsel) she might have been stigmatized as "*menteuse à triple étage.*"

If Jenison, an intelligent clerk in a public office, could vary his statements as he has done, doubtless because of this lapse of time, this old negro woman might well have erred, partly from the same cause. She probably did only what is so frequently done in this city by uneducated people. If either they or their ancestors ever happened to own any land here which had been sold long ago they are very easily convinced the transfer had been obtained by fraud, and that they ought to recover the lands

enhanced in value and with intervening rents. Charity woul prefer to ascribe the statements of this old woman rather to the lapse of time and the want of businesslike knowledge on her part than to corrupt motives. In these remarks I have been considering the testimony of the complainants alone, without noticing that for the defendants (all of whom except the three McIntires are disinterested witnesses) which contradicts every incriminating charge of Mary Pryor and the other complainants and their witnesses.

The case of Ackerman is of the same character. Can anybody believe Mrs. Ackerman's statement in her bill that she received only $75 from the sale of the small lot placed in McIntire's hands when it was proved clearly that about the time of the sale she had sworn in another case (where her interests seem to have been to minimize rather than exaggerate the amount obtained from the sale) that after reckoning costs, taxes, &c., she received $175? Neither of these cases could possibly stand alone, striking out the attack on the McIntires and the fact that there were five such accusations pending; and yet if Pryor's story is unreliable, and it be true that McIntire sold the lot to Jenison and conveyed it to him after a fair sale, that transaction was the end of all title of the Pryors, and what became of the land afterwards was a matter of no legal consequence to Mary Pryor.

Seeing no reason for changing the opinion I formerly expressed in these causes, I conclude in the language of the Supreme Court in Richards *v.* Mackall, 124 U. S., 188, which, after expressing its judgment that the complainant was not in a position to claim the interference of a court of equity because of his unexplained laches, declares "for that reason alone the judgment must be reversed and the cause remanded with directions to dismiss the bill."

I shall sign decrees dismissing each of these five bills with costs.

A. B. HAGNER,
Asso. Justice.

March 4, 1898.

IN THE COURT OF APPEALS, D. C.

Mr. Justice SHEPARD delivered the following opinion:

This is one of a series of five cases, argued and submitted at the same time, wherein different parties, complainants, have sued the same defendants to cancel certain deeds and annul certain pretended sales of lands, in the District of Columbia, claimed to have been made by Edwin A. McIntire, trustee, in violation of his obligations and duties as trustee, in certain express trusts, and in pursuance of a scheme to defraud the makers and grantors therein. The other cases are, No. 466, Brown *v.* McIntire *et al.*; No. 467, Ackerman *v.* McIntire *et al.*; No. 468, Southey *et al. v.* McIntire *et al.*; No. 469, Hayne *et al. v.* McIntire.

A considerable part of the testimony is common to all of the cases and was taken in one under a stipulation for its consideration in all.

In this case the original bill was filed by Mary C. Pryor, October 21, 1890, against Edwin A. McIntire, Martha McIntire and Hartwell Jenison, followed by an amended bill, November 28, 1890.

Complainant alleges that, on May 2, 1880, she was seized, in her own right, of part of lots 21 and 22 in square 569 (the same fronting 19 feet on F street in the

city of Washington), and that she and her husband, Thomas Pryor, since deceased, conveyed the same in trust to Edwin A. McIntire to secure the payment of a note for $450 made by them to defendant Hartwell Jenison. That she and her husband were colored people, ignorant of business methods, and relied upon the representations of said McIntire. That in the latter part of May, 1881, the note being then due and unpaid, he told them that he would be compelled to sell the property under the trust, but that said Thomas Pryor could bid off the property, and time would be allowed him to pay said indebtedness. That the sale was advertised and occurred June 17, 1881, when said Thomas Pryor became the purchaser at $700, and he and complainant remained in possession for some time. That McIntire informed them they should pay rent to him at $6 per month, which payments would be applied by him to the liquidation of the debt. That complainant has recently discovered that McIntire, instead of securing the property according to his representations, on the 28th of June, 1881, executed a deed, as trustee, to said lot to the said Hartwell Jenison, reciting a consideration of $806, which fact he concealed from complainant and her husband. That after making the said deed to said Jenison, said McIntire represented to him that the sum of $425 was necessary to pay taxes in arrears and expenses of sale, and procured from him authority to borrow said sum on the property. That he procured said Jenison to make a note for $425 to one Emma Taylor and to convey the lot to him, as trustee, to secure it. That about April 19, 1882, said McIntire represented to Jenison that the property could not be sold for more than the incumbrance, and induced him to execute a deed to said Emma Taylor for the amount thereof. Said deed was recorded April 21, 1882. That on September 27,

1887, McIntire again induced said Jenison to make a quitclaim deed to said Emma Taylor under the pretence that the same was necessary to recover certain drawbacks for special taxes on said property. That Emma Taylor is a fictitious person and an invention of McIntire's in aid of his scheme to defraud. That the $425 note to her was not necessary to pay the taxes, etc., on said property, and was a device of said McIntire's to cover up a fraud both upon complainant and said Jension, who relied on his representations.

That on May 31, 1884, said McIntire caused a deed to be made and executed, in the name of said Emma Taylor, to his sister, Martha McIntire, upon a pretended consideration, but really for his own benefit, etc.

The prayers of the bill are that an account be taken of what is due by complainant on the $450 note of May 20, 1880, to Jenison, and of all rents and revenues of the property, and that upon payment by complainant of any balance due by her, the said deeds be declared null and void.

Defendant Hartwell Jenison filed an answer in which he says that he was not present at the sale of the property and had no knowledge of any agreements, between McIntire and the said Pryors. He admits that he signed an order for sale at McIntire's request, and that a deed was made to him for the property. He admits the representation of McIntire about the amount due after the sale to remove incumbrances upon the lot, and the execution of the note for $425 to Emma Taylor and the execution of the trust deed. He admits that upon McIntire's representations he subsequently conveyed the property to said Emma Taylor, and also made the quitclaim to her. He says that he never saw said Emma Taylor and does not know that there is such a person. That he was not aware

of any fraud, and acted throughout under the advice and representations of McIntire, and had perfect confidence in his good faith. He says also that he received nothing from the rent of said property during the time that he owned the same.

The answers of the McIntires deny all the allegations of fraud and the several agreements alleged by complainant. They say that the transactions were all with complainant's husband, who had frequently spoken of domestic trouble, and requested that all matters of business be kept from his wife and her relatives. That there was no understanding as to an extension of the debt when due, and that said Thomas Pryor told said McIntire he could not pay the note, and was willing to convey the equity to any one that would assume it. That accordingly, on May 3, 1881, complainant and her said husband conveyed the said property to Martha McIntire, subject to the trust deed of May 2, 1880. That on the next day, May 4, 1881, said Thomas Pryor entered into an agreement with said Martha McIntire for the lease of the premises for continuing his coal yard thereon. That afterwards, said Martha McIntire, finding out there was a large sum due for taxes, &c., on the lot, considered it was best to let it be sold under the trust deed That the property was then advertised, on Jenison's authority, and also by his authority struck off to him for $806. That Jenison declined to pay the cost of sale, commissions, back taxes, etc., and authorized said McIntire to procure a loan of $425 for that purpose, which he did. That Jenison declined to pay that note when due, and decided to release his equity to the payee therein. That on June 29, 1881, in consideration of the surrender of his note, Jenison made a conveyance to said Emma Taylor, who, about one month thereafter, conveyed to Martha McIntire.

That on September 27, 1887, said Jenison made a quit-claim deed to said Martha McIntire (and not to Emma Taylor, as alleged in the bill), to cure a defect in his former deed to Emma Taylor and to enable Martha McIntire to procure any rebate that might be made on account of the large sums paid for special taxes. They deny that Emma Taylor is a fictitious person, and say that she was "a Philadelphia lady who formerly lived in Washington, but is now living in the West." They allege also that Martha McIntire is a purchaser in good faith and has since erected four brick houses on the lot; and that complainant, although living near by, made no claim to the property, etc.

The cases were submitted together, below, as here. The learned justice before whom the hearing was had, declining to pass directly upon the issues of fact, and expressing no opinion with respect thereto, dismissed the bill, in each case, upon the ground of laches in the several complainants.

1. Before proceeding to the consideration of the question of laches we think it necessary, as well as proper, to state our conclusions with respect to the questions of fact that are in issue.

A great mass of evidence has been introduced not only concerning the particular issues in this cause, but also respecting the important issue, common to all the causes, as to the existence of the person called Emma Taylor.

Some of this evidence is incompetent, and much is inconsequential; but to review it in detail, pointing out those particulars and giving an abstract of that upon which our conclusions are founded, would, we think, be an unnecessary consumption of time and space.

Without, then, entering into those particulars we consider it sufficient to say, that after a careful consideration

of such of the evidence as is clearly competent and relevant, we have arrived at the following conclusions:

(1) There is no such personage as the Emma Taylor who figures in the transactions of this and the other cases as grantee and grantor in certain deeds and instruments of writing. She is an invention of Edwin A. McIntire.

(2) Who actually signed the name, Emma Taylor, and personated her in acknowledging the execution of the many deeds purporting to have been made by her, need not be certainly ascertained. The evidence, however, tends strongly to show that Emma T. McIntire, sister of the defendants, signed the name to all of the said deeds. Two experts in handwriting, of reputed skill, express that opinion. Comparison of the Emma Taylor signature with certain signatures of Emma T. McIntire, acknowledged to be genuine, does not tend to lessen the weight of the expert testimony. Certain facts and circumstances tend to strengthen the conclusion.

Annie L. Galliher, who is the daughter of a brother of Emma T. McIntire, testified that her father's name was Edwin Taylor McIntire, and that the T in her name stood for Taylor; and that she was ordinarily called "Emma Taylor," in the family, to distinguish her from witness' sister Emma V. McIntire. Edwin, Martha, and Emma T. McIntire denied this, and said that Emma had herself assumed the T to distinguish her from other Emma McIntires, and it had suggested itself because her father had often called her "Tinsey ush," and she had, when small, called herself "Tots." Our conclusions with regard to the evidence of these persons, upon certain other points, are such that we cannot accept their statements as sufficient to overcome the evidence of a single unimpeached witness, who, besides, has no pecuniary interest in the case, whatever may be the ill feeling between her and

them. Moreover, a certain unquestioned and unexplainable fact, which was under the circumstances relevant testimony, shows that the said brother and sisters were capable of such personation and fraudulent imposition upon an officer authorized to authenticate instruments. They had another sister, Sarah I. McIntire, who died in Philadelphia, January 10, 1881, leaving a deposit of $1,196.60 in the Philadelphia Saving Fund Society. Martha McIntire drew this money upon the presentation of a power of attorney purporting to have been executed on May 2, 1881, by said Sarah I. McIntire, and acknowledged on the same day before a notary public in the city of Washington. The blank spaces of this instrument were filled out by E. A. McIntire, and he subscribed the same as a witness.

(3) Martha McIntire is not an innocent purchaser of the property in controversy in this or in any one of the cases. She and her sister Emma T. McIntire have, under the influence of their brother Edwin, co-operated with him in his schemes to defraud this and other complainants.

Whether the money advanced from time to time in making loans, purchases and improvements, really belonged to Martha McIntire, is immaterial. As between her and her brother Edwin A. McIntire, it must be regarded as belonging to her. In taking an account thereof, and of rents received, whether in her name, or that of Emma Taylor, she must be regarded as the party interested.

(4) Hartwell Jenison is an old man, and has been engaged as a clerk in the Treasury Department of the United States for many years. He first loaned $500 on the property, taking the assignment of a note to Geo. E. Emmons secured by trust deed. The transactions were

all arranged by and through a brother of Edwin A. McIntire, who was a fellow-clerk. Pryor paid the interest and $50 of the principal, the collection of which was attended to by Edwin A. McIntire. He negotiated a renewal for the remaining $450 of the principal, and caused a new note and trust deed, with himself as trustee, to be given by the Pryors. When the note matured, McIntire informed Jenison that the Pryors would pay no more, and that improvement taxes and incidental expenses would amount to about as much as the face of the note. Jenison, having no more money, requested McIntire to do the best he could with the property.

Jenison did not attend the sale, and was afterwards shown the deed made to him as purchaser. McIntire then caused him to execute a note for $425 to Emma Taylor, and a trust deed on the lot to secure the same. This sum McIntire told him was necessary to pay the taxes and expenses. McIntire found no purchaser for the property, and when the note fell due, Jenison, at his instance, conveyed the lot to Emma Taylor and received his note. No money was paid him. He subsequently, at McIntire's request, made the quitclaim to Martha McIntire to perfect the title, and was paid $100.

Jenison is apparently a credulous old man of little business capacity, and it is evident that he made no inquiry into the facts himself, but relied implicitly on the statements of McIntire, who was his agent and trusted adviser throughout.

During the time that elapsed between the sale to him and his deed to Emma Taylor, McIntire collected $6 per month rent of Thomas Pryor, of which no account was rendered to Jenison. Jenison has received $100 from the loan, and no interest whatever.

(5) Mary C. Pryor and her husband were simple-minded

colored people, and relied fully in the integrity of Edwin A. McIntire, whom they believed to be their friend. They trusted him to arrange the second renewal of the loan and also the third. He led them to believe that a sale would be formally made on account of the Jenison note, but the property would be secured to them. He evidently led them to believe that the sale would be, and had been, made to Thomas Pryor. Probably he intended at first to continue the loan in the name of his sister Martha, for, on May 3, 1881, he caused the Pryors to convey the property to her, upon a recited consideration of $5 and the payment by her of the encumbrance thereon. On the next day the property was leased by her to said Pryor for $6 per month. The Pryors evidently understood this as carrying out the agreement by which time was given, and that the rent payments were to be devoted to the liquidation of the debt.

Pryor paid the rent for several years, until his business failed. He and his wife had the key to the place, on September 24, 1884, when, at the request of McIntire, they gave it to Mr. Mack, a tenant, who then entered and paid rent to Edwin A. McIntire regularly for about fourteen months. The complainant then claimed ownership of the property, and did to the builders who afterwards erected the houses now claimed by Martha McIntire.

(6) Complainant delayed the institution of her suit until October 21, 1890, more than nine years after the sale under the Jenison trust deed. She was very poor and had but little intelligence. That she had perfect confidence in McIntire, in the beginning, is evident. She was kept in ignorance of the facts of the sale, and of the truth about the so-called Emma Taylor, and had no information with respect thereto until a short time before the institution of this suit, when she learned from the

publication of the facts in a suit brought by certain heirs of David McIntire against Edwin A. McIntire, that said Emma Taylor was probably a fictitious person, whose name was used by said Edwin A. McIntire in perpetrating frauds upon her and others.

(7) The lot in controversy, at the time of the sale under the trust deed in June, 1881, was worth about $2,000 exclusive of the improvements. At the time the testimony in this cause was taken, September, 1893, the lot was worth about $3,900, exclusive of improvements. There were some back taxes due on the lot in 1881, but not so much as represented by McIntire to Jenison.

2. It remains now to consider whether the defendants shall be permitted to hold and enjoy the fruits of their fraud because of the laches of the complainant in the prosecution of her just and equitable claim.

In this consideration it must be borne in mind, that the complainant is an ignorant colored woman, unfamiliar with the transaction of business and easily deceived. She was poor and friendless. The assertion of her equity depended, for its foundation, upon parol evidence. Besides, it could avail nothing against the titles of Jenison and "Emma Taylor," who, as to her claim, were the apparent holders of superior equities. Until she learned that said "Emma Taylor" was probably an invention of McIntire, and was thereby induced to inquire of Jenison concerning the facts, she can hardly be blamed for her inaction. Nor is there any reason for holding that she ought to have discovered those facts sooner.

Under all the circumstances we think the delay was not unreasonable. Moreover, there has been, in addition to the delay, no conduct whatever, under all the circumstances, that can be held to amount to acquiescence, or to a waiver of her right to redress. There has been no

change in the situation of the parties; no sudden or great increase in the value of the property; no intervening equities of innocent persons; no loss of important testimony, nor death of witnesses whose evidence might probably have created a doubt with respect to the fraudulent conduct of the defendants.

Nothing but the mere lapse of time—less than one-half that which would bar an action at law to recover possession—stands between the complainant and the enforcement of her undoubted right.

It is true that one witness has died, pending the suit, whose testimony would have been material. This was William Helmick, the justice of the peace who certified to the acknowledgments of the several deeds by the so-called Emma Taylor. In the light of all the facts, however, it is not possible that defendants have been put to any disadvantage by the loss of his testimony. Presuming him to have been honest, as we must, his testimony would, more likely, have strengthened the case of the complainant. The so-called Emma Taylor was doubtless introduced to him by McIntire and he certified to her as well known to him through confidence in the truth of his representations. He could not have testified otherwise without making himself a party to the conspiracy to defraud, because, as we have heretofore announced, there was no such person as said "Emma Taylor" in existence.

The familiar maxim, that, "equity aids the vigilant," is a typical doctrine of equity jurisprudence, and, in its application, best illustrates the beneficent spirit of its administration. The rule is neither arbitrary nor technical; but capable of rigid contraction on the one hand, and of wide expansion on the other, in the sound discretion of the chancellor, according to the special circumstances of each particular case. This idea is well expressed by Mr.

Justice Brewer, in the following words: "The length of time during which the party neglects the assertion of his rights, which must pass in order to show laches, varies with the peculiar circumstances of each case, and is not, like the matter of limitations, subject to an arbitrary rule. It is an equitable defense, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them.' Holstead *v.* Grinnan, 152 U. S. 412, 416.

We are not content, however, to rest our decision of this case upon the sufficiency merely of the excuses offered for the delay. They are not of the strongest, and in some classes of cases might he held insufficient. We will therefore go a step further in the announcement of a doctrine applicable not only to this case, but those that have been argued and submitted with it.

The testimony clearly shows that Edwin A. McIntire, not satisfied with the liberal fees and charges of the business, conceived the idea, early in his relations with complainant, and with Jenison, of defrauding them. Taking advantage of the trust relations and the confidence reposed in him by simple-minded people, he concocted his several schemes and carried them into execution through false representations and personations and the spoliation of papers.

In such cases, where there are no intervening equities, no elements of estoppel, and no inequitable conduct on the part of the injured parties themselves, is not a court of equity warranted in holding that nothing short of the statutory period of limitations in analogous cases at law, should bar the remedy? We think so, clearly, and believe that we are supported both by reason and authority.

In Prevost *v.* Gratz, 6 Wheat. 481, 497, the court said:

"It is certainly true that length of time is no bar to a trust clearly established; and in a case where fraud is imputed and proved, length of time ought not, upon principles of eternal justice, to be admitted to repel relief."

In the noted case of Michoud *v.* Girod, 4 How. 503, 560, where an executor's sale was set aside for constructive fraud after the lapse of more than twenty-seven years, Mr. Justice Wayne, speaking for the court, said: "In a case of actual fraud, courts of equity give relief after a long lapse of time, much longer than has passed since the executors, in this instance, purchased their testator's estate. In general, length of time is no bar to a trust clearly established to have once existed; and where fraud is imputed and proved, length of time ought not to exclude relief. Prevost *v.* Gratz, 6 Wheat. 481. Generally speaking, when a party has been guilty of such laches in prosecuting his equitable title as would bar him if his title were solely at law, he will be barred in equity, from a wise consideration of the paramount importance of quieting men's titles, and upon the principle that *expedit rei publicæ ut sit finis litium;* and, although the statutes of limitations do not apply to any equitable demand, courts of equity adopt them, or, at least, generally take the same limitations for their guide, in cases analogous to those in which the statutes apply at law. 10 Ves. 467; 1 Cox, 149. Still, within what time a constructive trust will be barred, must depend upon the circumstances of the case. Boone *v.* Chiles, 10 Pet. 177. There is no rule in equity which excludes the consideration of circumstances, and, in a case of actual fraud, we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it."

Our conclusion on this point has the support of the following well-considered cases: Lawrence *v.* Rokes, 61 Me. 38; Platt *v.* Platt, 58 N. Y. 646; Aylett *v.* King, 11 Leigh, 486; Gibbons *v.* Hoag, 95 Ill. 45, 69; Scherer *v.* Ingerman, 110 Ind. 428, 433; Ryle *v.* Ryle, 41 N. J. Eq. 582; Archibald *v.* Scully, 9 H. L. Cas. 360, 387; De Bussche *v.* Alt, L. R. 8 Ch. Div. 286, 314.

The case of De Bussche *v.* Alt is cited with approval by the Supreme Court of the United States. Kilbourn *v.* Sunderland, 130 U. S., 505, 519. In that case, which was one where agents had defrauded their principal, Chief Justice Fuller said: "Reasonable diligence is of course essential to invoking the activity of the court, but what constitutes such diligence depends upon the facts of the particular case. Where a party injured by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon discovery, and mere submission to an injury after the act inflicting it is completed cannot generally, and in the absence of other circumstances, take away a right of action, unless such acquiescence continues for the period limited by the statute for the enforcement of such right."

We find nothing in the later decisions of the Supreme Court, to which we have been referred by appellees, in denial of the doctrine of the earlier cases, or that which is expressed in the quotation from Kilbourn *v.* Sunderland, *supra*.

The case most relied on is Hammond *v.* Hopkins, 143 U. S., 224. But in that case the bill was filed immediately before the expiration of twenty years after the sale complained of. The court found there was no actual fraud on the part of the trustee and that everything was known to, and acquiesced in by, the *cestuis que trustent* at the time, and held that laches barred the complainants. That

the distinction between that case and one of actual fraud, was borne in mind, is apparent from the concluding part of the opinion, where the court, speaking as in Kilbourn *v.* Sunderland, through the Chief Justice, said: "In all cases where actual fraud is not made out, but the imputation rests upon conjecture, where the seal of death has closed the lips of those whose character is involved, and lapse of time has impaired the recollection of transactions and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence."

In the latest expression of the court upon this subject, viz: Abraham *v.* Ordway, 158 U. S. 416, to which also appellees refer, there was no fraud. In fact all the equities of the case seemed to be on the side of the party complained of.

It is unnecessary to discuss the question further. We cannot, solely on account of the delay of the complainant, refuse to undo the frauds that have been committed against her, and deny her the relief to which she has shown herself to be entitled.

The decree appealed from must, therefore, be reversed, with costs to the appellant. The cause will be remanded to the court below, with direction to take an account of the indebtedness remaining due by the complainant to Hartwell Jenison, together with an account of the reasonable value of the rents and revenues collected by the defendants since May 4, 1881, or that should have been received by them, as well as of all moneys that have been expended by them or either of them in the payment of taxes and all other proper charges on said premises. And upon the coming in of such report a final decree will be passed annulling each and all of the several trust deeds and conveyances that cloud the title to said premises, and awarding possession thereof to plaintiff upon

her paying, within a reasonable time, whatever sums may be found to be actually due, first to said Hartwell Jenison and then to the defendant Martha McIntire upon the settlement of the account aforesaid; all costs to be taxed against defendants. It is so ordered.

No. 373. 109.
Motion Papers for Appls.
Filed Nov. 15, 1897.

FILED.
NOV 15 1897
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

EDWIN A. McINTIRE AND MARTHA McINTIRE,
APPELLANTS,
v.
MARY C. PRYOR,
APPELLEE.

No. 373.

Answer to Suggestions Made by Appellee of a Diminution of the Record.

It will appear from the stipulation found on page 2 of the appellee's brief in support of the assertion of diminution of record, and which was entered into by S. S. Henkle, now deceased, who was, at that time, solicitor for the appellants, and Franklin H. Mackey, counsel for appellee, that it was only such testimony in the other equity cases mentioned, referred to in the appellee's motion, as should be relevant to the issue in this case, that could be referred to and read at the hearing in this case, and which was also to be subject to all and any objections as to materiality and competency thereof.

It will be thus seen that by her own showing the appellee is not entitled to have the testimony in bulk, as taken in said other equity cases, made a part of the record in this case, but only such as is relevant, material, and competent. But, were this provision not in the stipulation, the rules of evidence would govern and without said stipulation only such as is relevant, material, and competent could be made a part of the record in this case.

The records in all of these cases united will make a mass of additional testimony of about 500 printed pages, and it would be a hardship to impose upon the appellants the expense of having such a mass of matter sent up as part of the transcript in this case, and then the further expense of printing, when, as we submit, it is doubtful if any part of it is relevant, material, and competent. It is stated in the appellee's brief that no appeals were taken by the appellants from the decrees passed in those cases. This is true, but the reason was that the amounts involved in the other cases were not within the appellate jurisdiction of this court—each being for a very small amount, comparatively.

The appellants, therefore, suggest that the counsel for the appellee should be required to file a statement of the particular evidence and exhibits, that were used in the hearing below and are not contained in the transcript now on file in this case, which he deems necessary for the proper presentation of his case, with leave to the appellants, upon said statement being filed, to file such other parts of the evidence as they may think necessary, to meet that called for by the appellee.

ENOCH TOTTEN,
FRANK T. BROWNING,
For Appellants.

FILED
JAN 3 1899
JAMES H. McKENNEY,
Clerk.

No. 109.

Brf. of Mackey for Appellee.

Filed Jan. 3, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 109.

EDWIN A. McINTIRE AND MARTHA McINTIRE,
APPELLANTS,

vs.

MARY PRYOR, APPELLEE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

FRANKLIN H. MACKEY,
For Appellee.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 11-10-'98

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BRIEF FOR APPELLEE.

This case was in its inception one of *five* cases brought by bill in equity in the supreme court of the District of Columbia against the appellants above named as joint defendants in each case except one (Hayne's), in which last-named case Edwin A. McIntire was the sole defendant.

The five cases were entitled as follows:

Mary Pryor *vs.* Edwin A. McIntire and Martha McIntire.

Elizabeth Brown *vs.* Same.

Annie Ackerman *vs.* Same.

John Southey *vs.* Same.

Joseph Hayne *et ux. vs.* E. A. McIntire.

These cases were brought by the respective complainants to procure decrees declaring fraudulent and void certain deeds of real estate spread upon the land records of the District of Columbia, an accounting, etc.

In each of the cases fraud of the most flagrant character was charged, the details of which are, of course, different with each case, except in two important and indeed vital particulars, which were common to all, namely, it was charged:

First. That the defendant E. A. McIntire, being a trustee for the complainants and having the legal title to their property vested in him, falsely and fraudulently pretended, for the purpose of cheating the complainants and of gain to himself, that he had sold their respective properties to one "Emma Taylor." These alleged sales, the complainants averred, they had only recently discovered to have been entirely pretended and fictitious, and they averred that he had used this pretense during a number of years as a cloak to cover up his fraudulent appropriation during all that time of the rents and profits of the various properties.

Secondly. That, for the purpose of still further covering up these fraudulent dealings, he falsely and fraudulently pretends that this alleged "Emma Taylor" subsequently and at various dates sold and conveyed the respective properties, except the Hayne property, to the defendant Martha McIntire (one of his sisters), who falsely and fraudulently claimed to be the owner thereof.

In substance these two charges constitute the gravamen of the five bills except, as we have said, in the case of Hayne. In that case the property had passed into the hands of an innocent purchaser for value, so that only an accounting was sought from the defendant, who it was alleged received and appropriated to his own use the purchase-money.

Referring especially now to the charge in respect of the alleged "Emma Taylor," the complainants contended that they had proved her to be an imaginary person created by the defendant E. A. McIntire in furtherance of his fraudulent purpose to convert these properties to his own use. They contended that the alleged deeds purporting to have been executed by her were proved to be forgeries, the name "Emma Taylor" having been written at E. A. McIntire's suggestion and request by Emma Taylor McIntire, another of the sisters and employed at the time as a clerk in his office. The complainants further contended that the consideration mentioned in all of the five deeds from "Emma Taylor" to Martha McIntire was fictitious and fraudulent; that no money was paid by Martha McIntire to any one for these alleged conveyances to her, and that therefore, even if she did not know of the fictitious character of the grantor, she was not a *bona fide* purchaser for value, and this aside from the fact that she was charged with the knowledge *actually* possessed by her admitted agent, E. A. McIntire, and also aside from the fact that a deed having the name of a fictitious person as grantor would in no event pass a title.

On the other hand, these charges were all denied by the McIntires. They answered that the alleged deeds in which "Emma Taylor" figured as grantee in some and grantor in others were actual and *bona fide*, and that the considerations respectively set forth in them were actually paid; that "Emma Taylor" was a genuine flesh and blood being; that they had seen her, dealt with her, &c., and that no decep-

tion or fraud of any kind was practiced by any of the defendants.

The issues thus raised were, as we have said, common to all of the five cases, although, of course, there were other features in some of them.

For the purpose of saving the expense of repeating the testimony in each case relating to the charges that "Emma Taylor" was a fictitious person and the various charges of fraud against the defendants, Edwin A. McIntire and Martha McIntire, it was stipulated that the testimony taken in each case, so far as relevant, might be read and considered by the court as having been taken in each of the other cases. The following is a copy of the stipulation, which will be found in the record at the close of each of the cases, they being all alike. That in the Pryor case will be found on page 423 of the Record:

"It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, equity, No. 12761; Brown *vs.* McIntire, equity, No. 12977; Ackerman *vs.* McIntire, equity, No. 12978; Southey *vs.* McIntire, equity, No. 13034, and Hayne *vs.* McIntire, equity, No. 13177, in the supreme court of the District of Columbia, so far as the same may be relevant to the issues raised in this case of Pryor *vs.* McIntire (equity, No. 12761) in respect of Emma Taylor, Martha McIntire, or Edwin A. McIntire, *may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein, subject to all and any objections as to the materiality and competency thereof which could have been made if the same had been taken therein.*"

The Court of Appeals therefore considered *all* of the testimony in *all* of the cases relating to the question of the fictitious character of "Emma Taylor" and of the financial ability of Martha McIntire, and while not finding it necessary to announce its conclusion as to Martha McIntire's finances, did find, as matter of fact, from a consideration of

all of said testimony, that "Emma Taylor" was a fictitious person, as charged by the complainants, and that Martha McIntire was a party to her brother's frauds. Upon those charges—*i. e.*, the fictitiousness of "Emma Taylor" and the *mala fides* of Martha McIntire—the case now at *this* bar (Mary Pryor's case) was founded, as in fact were all the other cases. The Court of Appeals thereupon passed its decree in each of the cases (except Southey's, dismissed on the ground of laches) granting the relief prayed.

The amounts involved in the other cases were not sufficient to give this court jurisdiction on appeal, and consequently only the Pryor case has been brought here; but with it has been brought all the testimony in each of the other cases, for the reason that the court below having heard and decided the Pryor case (as well as the others) upon the testimony in *all* of the cases, it is necessary that this court, as a reviewing court, should have before it all the testimony upon which the court below made up its judgment before it will undertake to disturb that judgment.

Another important and unanswerable reason why the testimony in each of the cases should be considered by this court before undertaking to disturb the decree of the court below is the *stipulation* of the appellants, whereby much important testimony, which might and could have been taken in the Pryor case, was dispensed with by the complainant, she resting (under the stipulation) upon the testimony in the other cases as sufficient, with that taken by her in her own case, to establish the principal charges of her bill.

THE VARIOUS FRAUDS THROW LIGHT UPON EACH OTHER.

One of the propositions of law relied upon by the appellee in this case is that—

EVIDENCE OF FRAUD OF LIKE CHARACTER COMMITTED BY THE SAME PARTIES AT OR NEAR THE SAME TIME IS ADMISSIBLE TO PROVE THE FRAUD COMPLAINED OF.

This evidence of frauds of like character to that committed in the Pryor case appears largely in the testimony in the other cases, and as the entire case of the appellee is based upon a charge of fraud in respect of certain deeds of her property, in which deeds or some of them the *same* parties fraudulently conveyed other and similar properties in a similar manner at the same time, she contends, therefore, that the frauds in respect of these other transactions tend to throw light upon her own case when the *motive* of the defendants is in question. That is the doctrine laid down by this court in two leading cases—

"Where fraud in the purchase or sale of property is in issue evidence of *other fraud of like character* committed by the same parties *at or near the same time* is admissible. Its admissibility is placed on the ground that where transactions of a similar character executed by the same parties are closely connected in time the inference is reasonable that they proceed from the same motive."

Lincoln *vs.* Claflin, 7 Wall., 138.

And so Mr. Bigelow (Fraud, p. 161, vol. 1) says, citing numerous authorities, that—

"In order to prove fraud in a conveyance, evidence that the debtor and grantor made other conveyances of a collusive character is proper."

For fraud, he says, is seldom proved by *direct*, but almost always by *circumstantial*, evidence.

In the case at bar it will be observed that the Brown,

Ackerman, and Eller properties were conveyed to Martha McIntire at the *same time* and by the *same* deed, and the Southey and Pryor properties by the *same* deed, and that E. A. McIntire, Martha McIntire, and "Emma Taylor" are the *same* parties in all these conveyances, thus bringing them completely within the doctrine laid down by the Supreme Court.

So, too, in the case of Castle *vs.* Bullard, 23 How., p. 186, the Supreme Court says:

"Decided cases have established the doctrine that *cases of* fraud like the present are among the well-recognized *exceptions* to the general rule that other wrongful acts of the defendant *are not admissible in evidence* on the trial of the particular charge immediately involved in the issue. *Similar fraudulent acts are admissible in cases of this description*, if committed *at or about the same time*, and when the *same motive may reasonably be supposed to exist*, with a view to establish the *intent* of the defendant in *respect to the matters charged against him* in the declaration." "Some of the decided cases go farther, and hold that such evidence *is admissible, as affording a ground of presumption to prove the main charge;* but whether so or not, it is clearly *competent* as *tending* to show the *intent* of the actor in respect to the matters immediately involved in the issue on trial."

CIRCUMSTANTIAL EVIDENCE ALWAYS RELEVANT UPON THE QUESTION OF FRAUD.

Again, as some of the evidence offered is objected to on the ground of irrelevancy, it may be well to quote from the same case of Castle *vs.* Bullard:

"Much of the evidence was of a circumstantial character, and it is not going too far to say that some of the circumstances adduced, if taken separately, might well have been excluded. Actions of this description, however, where fraud is of the essence of the charge, *necessarily give rise to a wide range of investigation*, for the reason that the *intent* of the defendant is, more or less, *involved* in the issue. Experience shows that positive proof of fraudulent acts is not generally

to be expected, and for that reason, among others, the law allows a resort to circumstances as a means of ascertaining the truth."

"Whenever the necessity arises for a resort to circumstantial evidence, *either from the nature of the inquiry or the failure of direct proof, objections* to testimony *on the ground of irrelevancy are not favored* for the reason that the force and effect of circumstantial facts usually and almost necessarily depend upon their connection with each other. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when *corroborated by moral coincidences,* be sufficient to constitute conclusive proof."

Castle *vs.* Bullard, 23 How., pp. 186, 187.

And so Mr. Bump (Fraud. Convey., 691), speaking of the character of circumstantial proof admissible to establish the fraud, says:

"It usually consists of many items of evidence which, standing detached and alone, would be immaterial, but which in connection with others tend to illustrate and shed light upon the character of the transaction and show the position in which the parties stand and their motives, conduct, and relations to each other. *Quæ singula non prosunt, juncta juvant.* Although the evidence is generally circumstantial, it is quite as potent as direct testimony. Sometimes a combination of circumstances characterizes a transaction so plainly and so clearly as to stamp upon it unerring and indelible marks of fraud which cannot be mistaken, and the transaction itself presents phases so remarkable and peculiar that no fair-minded person can hesitate to pronounce it fraudulent. These *indicia* are often the clearest proof and quite as reliable as positive evidence."

The Court of Appeals of the District of Columbia having therefore, as it states in its opinion (Rec., 526), considered so much of the testimony in all of these cases as was relevant and common to all of them, arrived at the conclusion, among other things:

1st. That "there is no such personage as the Emma Taylor who figures in the transactions of this and the other cases as grantee and grantor in certain deeds and instruments of writing. *She is an invention of Edwin A. McIntire*" (Rec., 528).

2d. In respect of the credit to be given the testimony of E. A. McIntire and his two sisters, Martha McIntire and Emma T. McIntire, in view of their plainly proved perjuries and impersonations of Emma Taylor, the court said:

"Our conclusions with regard to the evidence of these persons are such that we cannot accept their statements as sufficient to overcome the evidence of a single unimpeached witness, who, besides, has no pecuniary interest in the case, whatever may be the ill-feeling between her and them. Moreover, a certain unquestioned and unexplainable fact, which was under the circumstances relevant testimony, shows that the said brother and sisters were capable of such personation and fraudulent imposition upon an officer authorized to authenticate instruments They had another sister, Sarah I. McIntire, who died in Philadelphia, January 10, 1881, leaving a deposit of $1,196.60 in the Philadelphia Savings Fund Society. Martha McIntire drew this money upon the presentation of a power of attorney purporting to have been executed on May 2, 1881, by said Sarah I. McIntire and acknowledged on the same day before a notary public in the city of Washington. The blank spaces of this instrument were filled out by E. A. McIntire, and he subscribed the same as a witness" (Rec., 528).

3d. In regard to the *bona fides* of Martha McIntire, the defendant who claims the Pryor property as an innocent purchaser, the court found that—

"Martha McIntire is not an innocent purchaser of the property in controversy in this (the Pryor case) or in any of the cases. She and her sister Emma T. McIntire have, under the influence of their brother Edwin, co-operated with him in his schemes to defraud this and the other complainants" (Rec., 529).

This is a terrible indictment, it must be admitted, of the defendants in the case at bar; and we may feel assured it would not have been found by the Court of Appeals but upon a full and careful consideration of *all* the evidence, and we feel sure that this court will not reverse that finding but upon a like consideration.

It becomes, therefore, the duty of counsel to carefully present an analysis of the evidence upon which these defendants have been convicted of forgeries—forgeries and frauds unparalleled, we believe, by any case ever before presented to this court.

FALSUS IN UNO, FALSUS IN OMNIBUS.

The case of Mary Pryor, like all the other cases, is founded upon the principal charge that one "Emma Taylor," whose name was used to defraud the complainant, is a fictitious personage. If it be true that she is such, then there can be no doubt that the relief prayed in the bill must be granted, since, with the establishment of that fact, there is no credible testimony in the case to impeach the *prima facie* case made out by the complainant and her witnesses. The appellants, Edwin A. McIntire, Martha McIntire, and their sister Emma T. McIntire, are the only witnesses who undertake to contradict Mary Pryor and her witnesses in the material matters charged, and as they have sworn repeatedly and positively to the genuineness of "Emma Taylor"—that they saw her, conversed with her, and dealt with her—they have necessarily committed the boldest perjury in so testifying, if it be true that she is, as the Court of Appeals found, "a fictitious personage," "an invention of Edwin A. McIntire." The maxim *falsus in uno, falsus in omnibus* applies directly to such testimony, as has been declared by this court in The Santissima Trinidad, 7 Wheat., 338. It is important that we shall dwell a moment upon this proposition of the law of evidence, for the case of Mary Pryor should not be turned

out of court upon the testimony of perjured witnesses if she has otherwise proved her case. In The Santissima Trinidad, Mr. Justice Story, speaking for the court, said:

"If the circumstances respecting which the testimony is discordant be immaterial and of such a nature that mistakes may easily exist, and be accounted for in a manner consistent with the utmost good faith and probability, there is much reason for indulging the belief that the discrepancies arise from the infirmity of the human mind rather than from deliberate error; but when the party speaks of a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth or his being in a vessel on a particular voyage or living in a particular place, if the fact turn out otherwise it is extremely difficult to exempt him from the charge of deliberate falsehood, and courts of justice under such circumstances are bound, upon principles of law and morality and justice, to apply the maxim *falsus in uno, falsus in omnibus.* What ground of judicial belief can there be left when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood?"

The Santissima Trinidad, Story, J., 7 Wheat., 338.

So Mr. Starkie in his work on Evidence, p. 873, says:

"As the credit due to a witness is founded in the first instance on general experience of human veracity, it follows that a witness who gives false testimony as to one particular cannot be credited as to any, according to the legal maxim *falsus in uno, falsus in omnibus.* The presumption that the witness will declare the truth ceases as soon as it manifestly appears that he is capable of perjury. *Faith in a witness' testimony cannot be partial or fractional.* Where any *material* fact rests on his testimony the degree of credit due to him must be ascertained, and according to the result, his testimony is to be credited or rejected."

"It is scarcely necessary to observe," he adds, "that this principle does not extend to the total rejection of a witness whose misrepresentation has resulted from mistake or infirmity and not from design, but, though his honesty remains unimpeached, this is a consideration which necessarily affects his character for accuracy."

And so in Stoffer *vs.* State, 15 Ohio State, 47, the court upon this subject say :

"The temptations and opportunities for deception in judicial inquiries are far greater than in the ordinary transactions of life. The tribunal must act promptly and decisively upon all the great interests which men hold valuable, and neither the right of individuals nor moral effect of their determinations can fail to suffer when they proceed upon evidence which is quite as liable to be deceptive as otherwise, and their findings as likely to be founded in error as in truth."

The rule thus laid down by the authorities is an eminently just and proper one. The integrity of judicial decisions over controversies of fact rests upon the confidence which judges place in the oral testimony of the witnesses. Without such confidence no judge can feel that he is dealing out that justice which he is called upon to administer. If he find that a particular witness has knowingly testified falsely about one material matter, how is he to know that the same witness is not also testifying falsely about other material matters? Shall a case be made to turn upon the testimony of a witness or witnesses who cannot be relied upon? Surely not. Therefore if the court find "Emma Taylor" to be a fiction, an invention of the defendant for fraudulent purposes, the testimony of the three McIntires must be wiped out of this case as with a sponge, and when that is done there is no material testimony but that of the appellee and her witnesses, and their credibility is not impeached.

PRELIMINARY QUESTIONS TO BE DISPOSED OF.

If the court has followed us thus far in this brief it will see that owing to the exceptional condition of the record (it being made up of the record in *five* cases when really there is but *one* of these cases over which it has jurisdiction) it will

serve the purpose of clearness to dispose of certain preliminary and important questions of fact which require an examination of evidence scattered through the *entire* record before attempting to examine the special features of the main case. This is so, because if the contention of the complainant is not sustained as to these preliminary issues it will hardly be worth while to dwell upon any others, for upon them is founded the complainant's (appellee's) case. These issues are:

1st. Is the alleged person, "Emma Taylor," who figures as the grantor and grantee in the principal deeds in the Pryor case, a fictitious person?

2d. Is Martha McIntire a *bona fide* purchaser for value?

3d. Are the McIntires such credible witnesses that the court can rely upon their testimony when they undertake to contradict the testimony of Mary Pryor and her witnesses?

These questions cannot, as we have said, be determined against the appellee, Mary Pryor, by an examination of the evidence in her case alone, for under the stipulations of the parties it was agreed that the evidence in all the *other* cases, so far as it was relevant to her case, need not be taken a second time, but might be considered as having been taken in her case and might be referred to and read upon the hearing.

To establish, then, the affirmative of the three issues above stated is the object of this preliminary brief. We first proceed to the "Emma Taylor" fiction.

"EMMA TAYLOR" A FICTION.

As was said by the Court of Appeals, "there is no such personage as Emma Taylor—she is an invention of Edwin A. McIntire." If there were no other evidence than that of the alleged "Emma Taylor" signatures to the five deeds in which she purports to be the grantor, these of themselves would establish the charge of the complainant. These original deeds have been brought here for the inspection of the court. Besides this, we have as part of the record photographs and photo-lithographs of these signatures. We submit them with confidence to the court as proof self-evident of the alleged forgeries. The "Emma Taylor" signatures are what the experts call "manufactured" or "built up" signatures. A comparison of them with the genuine signatures of Emma T. McIntire easily shows that they were written by her. In the first signature she did not attempt to disguise her hand at all, and the similarity in the form of the letters with those of her own name is too striking to be explained away. Afterwards, when she attempts to write the same name, she with each effort makes a different disguise of her true handwriting and "manufactures" an *Emma Taylor* signature, each of which is so unlike as to preclude the idea that it is genuine. She, however, betrays herself in the peculiar way in which she makes her *T* and the *m* and *n* of the forged signature. Each attempt to disguise her hand was done without having the previous signature before her in order to "copy" or "trace" it. Each, except the first, is a new and distinct attempt to make the signature as much unlike her own as possible. As a result, they are each, as we have said, too unlike all the others to be honest, and yet the betraying *T* and *m* and *n* can be found in each. A fact, too, amounting almost to a confession on the part of Emma T. McIntire that she wrote these signatures appears in evidence. After the strong similarity of the *T* in Taylor

to the T made by her in the middle initial of her name had been pointed out by the experts, when she came to sign her testimony *she changed the entire manner of making that initial* in a lame effort to mislead the court. The signature to her testimony has been photographed and is now before the court to verify this statement.

The experts in handwriting, Mr. Wm. F. McLellan and Mr. E. B. Hay, the first for over forty years chief of the warrant division of the Treasury Department and the recognized expert of that department of the Government in all matters of doubtful handwriting, have both of them testified, after an examination of these signatures and a comparison of them with the signature of Emma T. McIntire, that they were written by her, and the Court of Appeals also found such to be the fact. Besides the forgeries of these signatures there are numerous other forgeries of signatures and writings and spoliations of papers in these cases which have been detected and pointed out by the experts in the most convincing manner, but the limits of this brief will not permit us to dwell upon each, or, indeed, much of them. Mr. Justice Shepard, delivering the opinion of the Court of Appeals in these five cases, points out some of them. It was these forgeries and spoliation of papers which weighed as much, if not more, than anything else in bringing that court to its conclusions. Unfortunately, we are handicapped in this court by the fact that your honors necessarily cannot go into a close examination of the various frauds and forgeries special to each of the other cases, and yet the judicial examination of those special facts, all of them relevant to the case now at bar, had, as it undoubtedly should have had, its *cumulative* effect upon the minds of the learned justices in making up their judgments. We submit, therefore, that the conclusions of the Court of Appeals upon all the questions of fraud which arise in the Pryor case, and especially as to the fictitiousness of "Emma Taylor," should have great weight with this court. They have had better opportuni-

ties to judge of the fraudulent *motive* of the defendants by reason of their being called upon to judicially examine in detail each and all of the five cases, while your honors, on the other hand, can only from necessity look into them cursorily, except, of course, the case at bar.

THE CIRCUMSTANTIAL EVIDENCE.

Passing now from the matter of the forgeries, as we find them in this and the other cases, we come now to the consideration of the circumstantial facts pointing to the certain conclusion that the alleged "Emma Taylor" has no existence except as a fraudulent creation of the McIntires.

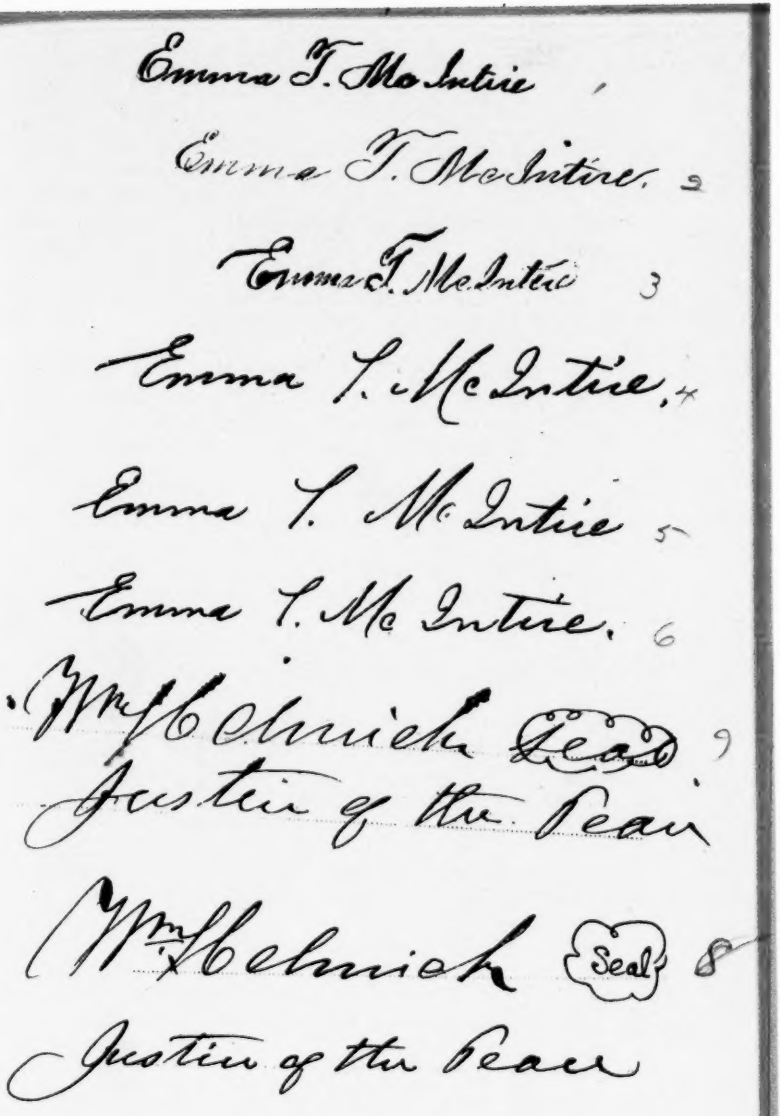
Though E. A. McIntire claims to have had not less than *nineteen* real-estate transactions with "Emma Taylor," either directly or through him as the agent of one or the other of the parties, during a period of less than three years and a half, viz., from April 12, 1881, to September 6, 1884, in all of which an aggregate of thousands of dollars was involved, yet he has signally failed to produce the slightest scrap of paper, relevant or irrelevant, having any connection with her or upon which her name or handwriting appears, and he admits he is unable to do so, so that but for the five deeds, two of which we produced ourselves, there would be nothing to show that this alleged "Emma Taylor" could even write.

Here is a list of her *alleged* real-estate transactions admitted by E. A. McIntire to have been made through him as agent of the parties and in evidence in the record:

"1881, April 1, E. A. McIntire to Emma Taylor, foreclosure deed of Brown property; consideration, $500 (Ex. A. H. No. 42; Rec., 514).

"1881, April 25, Emma Taylor and Barbara Brown, deed to Martha McIntire, joint deed of Brown property; consideration, $600 (Ex. A. H. No. 1; Rec., 707).

"1881, June 29, trust deed from Jenison to McIntire to secure Emma Taylor; $125 (Ex. A. H. No. 26; Rec., 447).



No. 1.–Admitted signature to paper filed Nov. 27, 1885, in the Probate Court, estate of Ada McIntire.

No. 2.–Admitted signature to paper filed Dec. 17, 1885, in Probate Court, estate of Ada McIntire.

No. 3.–Admitted signature Emma T. McIntire as witness to the Medford & Waldron contract. Exhibit A. H., No. 18, Pryor's case.

Nos. 4, 5 and 6, are the admitted signatures to the testimony of Emma T. McIntire in the Pryor, Hayne and Brown cases respectively, showing intentional change in the formation of the initial letter T after attention had been called by the experts to the remarkable similiarty between the T's in Nos. 1, 2 and 3, and the T in the "Taylor" signatures.

Nos. 7 and 8, are signatures, admitted to be genuine, of Wm. H. Helmick to the acknowledgments of the "Emma Taylor" deeds.

"1881, Sept. 6, deed, Emma Taylor to Martha McIntire, conveying Brown, Eller, and Ackerman properties (Ex. A. H. No. 2; Rec., 709).

"1882, January 11, Margaret Eller to Emma Taylor. Deed conveys Eller property; actual consideration, $500 (Ex. A. H. No. 29; Rec., 451).

"1882, January 12, Swartzell to Emma Taylor, deed of Southey property; consideration, $2,000 (Ex. A. H. No. 43; Rec., 457).

"1882, April 19, Jenison to Emma Taylor, deed of Pryor property; consideration, $425 (Ex. A. H. No. 25; Rec., 445).

"1882, April 24, Ackerman to Emma Taylor, deed of Ackerman property; consideration, $300 (Ex. A. H. No. 7; Rec., 811).

"1882, May 6, Willis Herndon to Emma Taylor, deed of Herndon property; about $1,000 (Ex. A. H. No. 46; Rec., 459).

"1882, June 10, release by E. A. McIntire to Emma Taylor of Herndon property; consideration, nominal (Ex. A. H. No. 47; Rec., 459).

"1882, August 28, E. A. McIntire to Emma Taylor, deed of Hayne property; consideration, $500 (Ex. A. H. No. 49; Rec., 460).

"1882, December 2, Wm. E. McIntire to Emma Taylor, deed of Wm. E. McIntire property; consideration, $200 (Rec., 103).

"1882, December 30, Emma Taylor to Joseph Forrest, deed of Herndon property; consideration, $900 (Ex. A. H. No. 14; Rec., 512).

"1883, May 14, Emma Taylor to Alfred Brown, deed of Hayne property; consideration, $1,100 (Ex. A. H. No. 12; Rec., 434).

"1883, May 31, Emma Taylor to Lettie F. McIntire, deed of Wm. E. McIntire's property (Rec., 103).

"1884, May 31, Emma Taylor to Martha McIntire, deed of Pryor and Southey properties, two pieces; consideration, $2,500 (Ex. A. H. No. 14; Rec., 436).

"1884, September 6, Emma Taylor to Martha McIntire, deed, three properties, $1,800 (Ackerman, Eller and Brown)" (Ex. A. H. No. 2; Rec., 709).

In addition to these nineteen transactions, it must be remembered that there were numerous others, for if E. A. Mc-

Intire is telling the truth when he says that "Emma Taylor" was the *real* owner of these properties for periods of from three months to three years, then, since we have shown that during these periods he collected the rents, paid the taxes, made repairs, etc., it must all have been done on her account.* Moreover, Alfred Brown (Rec., 941) swears he paid him twelve promissory notes of $75 each, running over a period of 36 months, making the last payment in December, 1886, all of which were payable to Emma Taylor, and which he therefore must have collected for her.

Nor is he able to produce a single person who ever saw her during the time the conveyances bearing her name were made. He produces four witnesses who claim that they saw a woman *they were told by McIntire* was named Emma Taylor, but the *time* when they say they saw her was from one to two years *before* the first of these conveyances was made to her, viz., April 1, 1881. He produces not a single witness who saw her *after* that date. Let us examine the testimony of these witnesses briefly:

Elmer E. Atkinson (Rec., 154) says he saw a woman a number of times in McIntire's office about 1879 or 1880, at which time, in May or June of 1880, he left the city of Washington and did not return for seven or eight years afterwards; *understood her name* was Emma Taylor.

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* Though McIntire strenuously denied that he ever had anything to do with these properties during the time when he says Emma Taylor owned them, and denied that he had any bills for taxes, repairs, etc., during that period, and therefore had no correspondence or receipts from her about them, yet the court will not fail to observe that after the court below had decided *against* him and directed an accounting before the auditor, he *there*, in order to lessen the amount of the finding against him, produced bills for taxes and repairs which he *there* claimed he paid at the *very time* when he says Emma Taylor owned the properties, notwithstanding he had sworn in the main case that he had never paid any such bills.

Annie Mc, Ackerman

The above is an enlarged photo-lithograph copy of the forged signature of Annie Ackerman to the deed of Sept. 6, 1884 (Ex. A H. No. 7. Rec 811.) Those below are like copies of her genuine signature.

A. M. Ackerman

very respectfully

A. M. Ackerman

Emma Taylor

Enlarged photo-lithograph of the forged "Emma Taylor" signature to the deed of April 25, 1881 (Ex. A. H. No. 1). Observe the partially erased attempt to spell the name at first Tarlor.

NOTE.—April 1, 1881, was the first deed made by McIntire to Emma Taylor, and April 28, 1881, the first deed purporting to be signed by her; so it will be seen that this witness had left Washington nearly a year before *our* "Emma Taylor" came upon the scene.

Charles F. Shafer (Rec., 152) used to go into McIntire's office every day to look at the *Real Estate Record* and to "pick up" business, and saw a lady frequently come in the office. "I was not introduced to her, but I was *informed* that she was Emma Taylor."

"Q. Do you know what her business was there?
"A. Well, she would talk about *buying* real estate.
"Q. With whom did she talk?
"A. With Mr. Edwin A. McIntire."

Cross-examined:

"Q. You saw her frequently there in 1879?
"A. Yes.
"Q. Did you ever see her there after 1879?
"A. No, sir; *I left there in 1879.*"

This witness, it will be seen, says he heard her talk with Mr. E. A. McIntire in 1879 about buying real estate and she came in *frequently* for that purpose, but it is in evidence that there is not a deed of record to Emma Taylor prior to April 1, 1881, and that no person but the McIntires ever made her a conveyance; so that she must have kept up her talking with McIntire *for two years* or thereabouts before concluding to buy anything. But as this witness left here in 1879, about two years before *our* "Emma Taylor" makes her appearance as a buyer of real estate, his testimony, vague and *peculiar* as it is, proves nothing.

Harriet M. Harris (Rec., 334): Knew a Miss or Mrs. Taylor who used to take her meals at Forsyth's dining-rooms, where I used to get mine. I left Washington on the 3d of April, 1882, and I had quit taking my meals at

Forsyth's about a year previous to leaving Washington. From April, 1881, to April, 1882, I did not take my meals at Forsyth's. Personally I never spoke to Miss Taylor and had no acquaintance with her; I simply saw her in the dining-room and heard her spoken to as Miss Taylor. I do not know whether her name was Emma Taylor or not; I could not say. It might have been Jane Taylor, for aught I know. I only saw this lady *once* in Mr. McIntire's office; think it was probably in December, 1880, I saw her there."

It is plain from this witness' testimony that this Miss Taylor who took her meals at Forsyth's and that the witness saw *once* in McIntire's office might have been one of a dozen Miss Taylors. At all events this witness, like the preceding ones, saw her *before* April, 1881, and never saw her afterwards.

We come now to the testimony of a most important witness, John Taylor (Rec., 141): "No relation of Emma Taylor; used to sell ice cream to Emma Taylor in 1876–'8; saw her once or twice in McIntire's office in 1878 or 1879." One day McIntire asked him if he knew what had become of Emma Taylor.

"Question. You saw Emma Taylor, you say, at Mr. McIntire's office?

"Answer. Yes, sir.

"Q. When was it you first saw her there?

"A. In 1877 or 1878.

"Q. How long was it after you first saw her at Mr. McIntire's office that he asked you if you knew what had become of her?

"A. Well, I went into Mr. McIntire's office to rent a house. I got the keys from him to look at the house, and he asked me whether I knew anybody by the name of Emma Taylor, it being the same name as my last name, Taylor, and I said, 'Yes;' that I knew a lady named Emma Taylor who used to buy ice cream from me when I was in business, and he asked me where she was.

"Q. When was that?

"A. I was employed in the Pension Office, in the Shepherd building at that time.

"Q. How long after you first saw her?

"A. *Well, some time between 1880 and 1881.*

"Q. *That is when he first asked you what had become of her?*

"A. *Yes, sir.*

"Q. And from that time on whenever he met you he asked you *what had become of her?*

"A. *Yes, sir.*

"Q. *And you fix that date by the fact that you were then employed in the Pension Office?*

"A. *Yes, sir; I was then in the Pension Office, in the Shepherd building. I got my appointment on the 10th of March, 1879.*"

Rec., 149.

Observe that this witness *fixes the time* when McIntire first inquired of him about Emma Taylor by comparing that time with another time, the date of which is a matter of *record*, viz., his appointment to a position in the Pension Office on March 10, 1879, so that he could not have been mistaken in naming the date as being somewhere in 1879 or 1880 when McIntire *first* asked him what had become of Emma Taylor. *We know, then, the time when McIntire lost sight of her and first began to make inquiries about her*, and this is most important to be known, for John Taylor further testifies that at this conversation McIntire asked him to make inquiries for Emma Taylor and he promised to do so. He says, also, that he met McIntire frequently after this and *every time* he would meet him he, McIntire, *would ask him if he, witness, had heard anything of Emma Taylor.*

"Question. He would keep on asking you that?

"Answer. Yes; He wanted to know if I found out anything about what become of her, and I told him I had not.

"Q. You met him often since then?

"A. Yes, sir; I met him in his office and met him on the street, and he would ask me what had become of her, and I told him that I did not know and could not tell him.

"Q. Whenever he met you he would ask you about her?
"A. Yes, sir.
"Q. Probably three or four times a year?
"A. Yes, sir. Sometimes he would meet me on F street, or wherever he was on business, and he would stop and talk with me, and he would say 'Did you ever find out what became of Emma Taylor?' And I said, 'No; I could not find out; she has gone out West somewhere, but I do not know where.'
"Q. Those inquiries were kept up, commencing eight or nine years ago—when did he cease asking you about her?
"A. *A year or so ago.*
Rec., 145.

So that, according to this his own witness, assuming him to be truthful, a young woman by the name of Emma Taylor used to call at McIntire's office from 1878 to 1880. He lost sight of her in 1880 or thereabouts and would make inquiries about her every time he would meet the witness, John Taylor, up to "a year or so ago," and he would meet him "three or four times a year." Now, when we refer to the dates of the "Emma Taylor" deeds we find the first one executed by her to be the "joint deed" of Barbara Brown and *Emma Taylor* to Martha McIntire, bearing date April 25, 1881, and the last that of Emma Taylor to Martha McIntire, conveying the Brown, Ackerman, and Eller properties and bearing date September 6, 1884. *During, therefore, the very time when his own witness says he, McIntire, was looking for Emma Taylor and getting people to hunt up her whereabouts for him he would have us believe that he was buying from and selling to her these properties of the complainants.*

Of course it is not necessary for us to prove that there never at any time existed such a person as Emma Taylor; that would be impossible, for there were doubtless at that time and still are a number of persons of that name in this city, and indeed in any city of two hundred thousand population. Even, therefore, had there been a person of that name in McIntire's office prior to 1880—indeed, had it been

proved that a person of that name was there up to 1885—it would not establish the fact that *she* was the "Emma Taylor" who bought and sold these properties. Our proposition is that the grantor and grantee of these deeds is fictitious; that no matter what the name is, whether Emma Taylor or Jane Smith (and it might as well have been one as the other), there was no *actual* grantor and no *actual* grantee of that name, or of any other name, who paid the purchase-money in the one case or received it in the other; that it was never intended by McIntire, who drew up these deeds and used the name Emma Taylor as a mere "dummy," that any person by that name should ever have any right, title, or interest in them. The name was used, just as fictitious names have been used before, to defraud and deceive, and merely showing that *at that time* there was a person *of that name* in existence will not prove that particular person to be the grantor or grantee of these several deeds.

And herein we submit his honor Mr. Justice Hagner, who delivered an opinion in this case in the special term, misconceived utterly the plaintiff's position in regard to "Emma Taylor."

The learned judge says (Rec., 489):

"The court could not concede, except because of a stolid purpose to disbelieve every witness on the part of the defendants, that the non-existence of Emma Taylor is so conclusively established by the testimony that the complainant's assumption of there being no such person is justifiable. *Eight witnesses testify to seeing her* about McIntire's office, as large a number as either complainant adduced to support any assertion on that side."

These eight witnesses are made up of the four whom we have already cited, the *three McIntires* and Joseph Forrest, a witness produced by the complainants themselves, who admitted that he had testified in the case of Wm. E. McIntire *vs.* E. A. McIntire that he was the grantee in a deed

from Emma Taylor through McIntire's agency, *and that he had never seen her*, and yet when summoned by us to repeat this testimony probably allowed the fear of weakening his own title to father his second thoughts upon the subject, and accordingly he testified, to our surprise and in a hesitating way, that he had "*somehow an impression* that upon one occasion either Mr. McIntire or his clerk pointed out some party in his office as Emma Taylor, but I had no conversation with her at all." Of course this is not evidence that he ever saw "Emma Taylor," yet the court included him in the "eight witnesses." However, it was not for this purpose that we digressed into this observation. What we wish to observe is that, leaving out the three McIntires, not one of these witnesses undertakes to swear that the Emma Taylor he or she saw, if indeed he or she saw *any* Emma Taylor at all, was the person who *signed* these deeds or was the *grantee* in any of them. We submit, in view of the suspicious circumstances tending to show the non-existence of this alleged Emma Taylor, that we are entitled in common justice to have *the Emma Taylor* which these witnesses say they saw long before the date of any of these deeds *identified* as the *same* Emma Taylor who, it is claimed, signed them years afterwards; for, suppose the name, instead of being Emma Taylor, had been John Smith, certainly producing witnesses to swear that they saw a man by the name of John Smith in McIntire's office a year or more prior to the execution of these deeds would not prove that *he* was the John Smith named as the grantee in the deeds. Some identification, especially when there are suspicious circumstances and the identity is disputed, is necessary.

As a matter of fact, McIntire has been unable to produce a single person besides himself and sisters who ever saw any one by the name of Emma Taylor in or out of his office *after* 1880; but, more than this, the witness Harleston says he was in McIntire's office "from the fall of 1879 until the

fall of 1884," which would cover the entire period of the "Emma Taylor" deeds, and yet here is his testimony:

"Q. While you were in that office do you recollect meeting any such person as Emma Taylor?
"A. I do not recollect doing so.
"Q. You do not recollect meeting any such person as Emma Taylor?
"A. No, sir."
Rec., 74.

If McIntire tells the truth, Harleston certainly would have met her, for, according to McIntire, she was during this period coming to his office "frequently." Often, he says, she would come "three or four times a week" (Rec., 762).

Thus with Harleston, the very man who would have seen her if McIntire is telling the truth, *having no recollection of her* whatever, and not a single person being produced except his two sisters who ever saw her or heard of her during the period when, if she were not a fiction and a myth, many persons would have seen her, we are asked to believe that she was coming into his office during all that time "three or four times a week" and carrying on these numerous transactions.

The moment we accept "Emma Taylor" as a fictitious character every action of McIntire becomes explainable and entirely consistent with that fact; on the other hand, accept her as a genuine person and his actions in respect of her become utterly inexplicable. Thus every deed made by or to "Emma Taylor" which appears on the land records of this District is in evidence in these cases (see testimony of W. G. Cleary, Rec., 100), and *every one* of them was executed through the agency of E. A. McIntire, *every one* of them was *recorded* by him, and *every one* of them *returned to him* by the recorder of deeds after they were recorded.

Allen E. Wilson, a clerk in the recorder's office, testifies (Rec., 354) that for all deeds brought to the recorder's office for record receipts are given, and that when the deed is

called for after being recorded the name of the party to whom the deed is given is entered upon the margin of the record.

"Q. I see, for instance, on this certified copy of deed from Edwin A. McIntire, trustee, to Emma Taylor (Ex. A. H. No. —) on the margin thereof this: 'Del'd to E. A. McIntire July 2d, 1881. R. R.' That means what?

"A. That means that the original deed was delivered to E. A. McIntire July 2, 1881, and the receipt returned."

Then he testifies (Rec., 354) that the margins of each of the deeds in the following list are respectively marked as delivered to E. A. McIntire thus:

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 42; del'd to E. A. McIntire July 2, 1881. R. R. [R. R. meaning receipt returned].

"Swartzell to Emma Taylor, Ex. A. H. No. 44; del'd to E. A. McIntire Feb'y 21, 1882. R. R.

"Eller to Emma Taylor, Ex. A. H. No. 44; del'd to E. A. McIntire June 18, 1882. R. R.

"Jenison to Emma Taylor, Ex. A. H. No. 45; del'd to E. A. McIntire June 5, 1882. R. R.

"Herndon to Emma Taylor, Ex. A. H. No. 46; del'd to E. A. McIntire June 7, 1882. R. R.

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 47, del'd to E. A. McIntire July 17, 1882. R. R.

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 48; del'd to E. A. McIntire Jan. 5, 1883. R. R.

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 49; del'd to E. A. McIntire Aug. 6, 1883. R. R."

"Q. If the originals of these deeds had been delivered to the grantees, this marginal note would have shown that fact, would it not?

"A. Yes, sir; instead of being marked delivered to E. A. McIntire it would have been marked to the grantee.

"Q. And that, you say, has always been the practice of your office?

"A. Yes, sir."

Thus notwithstanding this proof *by the record* that *every* deed ever made to "Emma Taylor," instead of being returned to her, was returned to E. A. McIntire, he deliberately swears he has no recollection *in any case* of such being done!

Again, we establish out of the mouths of the tenants of these respective properties at the time when McIntire says "Emma Taylor" owned them that they paid the rents, not to "Emma Taylor," but to E. A. McIntire. Thus—

John Holmes (Rec., 778) says he paid the rent to E. A. McIntire of the Ackerman property during the period when Emma Taylor is alleged to have owned it.

Emily Miller (Rec., 883) testifies to same effect as to the Southey property.

Lucinda Freeman (Rec., 927) to same effect as to the Hayne property.

The Pryor property was vacant during the Emma Taylor ownership.

Now McIntire is asked as to the Ackerman property (Rec., 282):

"Q. Did you have anything to do with the collection of the rents of that property during the interval between April 24, 1882, and September 6, 1884?

"A. *I could not say.*

"Q. That interval was the interval which existed from the time the property was sold by you to Emma Taylor for Mrs. Ackerman and afterwards sold by Emma Taylor to Martha McIntire?

"A. *I have no recollection.*"

And as to the Hayne property (Rec., 281):

"Q. Who collected the rents of the Hayne property on 9th [E] street after you sold it to Emma Taylor and until it was sold by him to Alfred Brown?

"A. *I have no recollection.*"

And as to the Southey property (Rec., 879):

"Q. When she [Martha McIntire] sold to Emma Taylor who collected the rents?

"A. I collected for my sister all the time.

"Q. But after she sold to Emma Taylor who collected the rent?

"A. *I do not recollect.*"

And yet he never fails to recollect that he collected the rents for his sister and for Hayne and even for Southey away back in 1874–'5. He says: "I remember *distinctly* collecting the rents for Southey (Rec., 855)." All of these are for period *antedating* the collections for Emma Taylor.

So as to the taxes. We have proved by a clerk from the tax-collector's office that during the same periods McIntire paid all the taxes on these properties (see testimony of Fitzhugh, Rec., 681), and yet in every instance McIntire says he has "no recollection of doing so," until, as we have before observed, he is brought before the auditor for an accounting, after the court has held Emma Taylor to be a myth, when he presents bills which he claims he paid during this period and asks and gets credit for them although in the main case he time and again swore that he never paid any bills for repairs during the time he claimed "Emma Taylor" owned these properties. Can stultification go further than this?

So as to the manner in which the purchase-money was paid for the Pryor and Southey properties which he alleges he bought from Emma Taylor for his sister Martha for $2,500:

"Q. How was the twenty-five hundred dollars paid to Emma Taylor?

"A. I could not say positively.

"Q. You cannot say whether it was paid to her by your check or in cash?

"A. No, sir; I could not say positively.

Rec., 261.

* * * * * * *

"Q. And you do not recollect the fact of making such payment by check?

"A. No, sir.

"Q. And you do not recollect the fact of making the payment in cash?

"A. I recollect that the payment was made.

"Q. But you cannot say whether it was made in cash or by check?

"A. No, sir. I cannot recollect in regard to any particular transaction, unless there be something to call my attention to it."

Rec., 262.

So as to how he got this $2,500 from his sister Martha:

"Q. How did your sister Martha give you this money to pay for the Pryor and Southey properties—by check or in cash?

"A. That I do not recollect.

"Q. Have you any memorandum at your office which would show whether she paid you this money in cash or by check?

"A. I have not been able to find any so far."

Rec., 264.

So as to the time when he says Emma Taylor bought the Southey property from his sister for $2,000:

"Q. When Emma Taylor paid you $2,000 for this property for your sister, how did she pay it to you?

"A. I have no recollection.

"Q. Do you not remember whether she paid it to you in cash or by check?

"A. She may have by both or either?

"Q. Have you any memorandum at all of that payment made to her?

"A. I cannot find anything at all as yet" [and he never did.]

Rec., 878.

So as to the transaction in which he says he bought from Emma Taylor for his sister Martha the Ackerman and Eller properties:

"Q. What did your sister pay you at that time?
"A. I think it was twelve hundred dollars.
"Q. You cannot remember whether it was paid in cash to you to pay to Emma Taylor or paid to you by your sister by check?
"A. I have answered that question a dozen times, and I answer it again in the same way, that I cannot remember those particulars in any transaction."
Rec., 266.

But he does remember "those particulars" when he wants to. Thus in this very transaction he declares he can remember "distinctly" the full particulars about the signing and acknowledgment of the deed by "Emma Taylor," when, where, and how it was done, the witnessing of it, &c.:

"That signature was made by Emma Taylor in my presence and in my office and in the presence, also, of Mr. Richey as a witness, who was there then at the time."

[By Mr. HENKLE:]

"Q. You say that you saw her make that signature in your office?
"A. Yes.
"Q. And it seems to have been signed by William Helmick and H. Richey as subscribing witnesses. Did you see these two witnesses sign also?
"A. I did.
"Q. Were you present at the acknowledgment?
"A. Yes, sir. That was done at my office. The whole of it was done at my office."
Rec., 233.

To tell us that he can remember all these details but cannot remember the much more important matters of the purchase-money payment in any of these numerous transactions is simply absurd. We submit his testimony to the

court, and we ask it to observe in the course of its reading his remarkable memory for *minute details* of matters about which there is *no dispute*. Thus see his testimony in regard to the Southey note transaction of over ten years prior to any of his dealings with "Emma Taylor," and his testimony in regard to his dealings with Hayne and Mrs. Ackerman, with Eller, with Barbara Brown, and, indeed, in every instance where immaterial facts are being testified to, and nobody proposes to contradict him; but touch him about "Emma Taylor" in any place where if he should testify positively to payment of checks or cash we could trace them to their source, he instantly refuses to commit himself.

If McIntire is telling us the truth, he had for nearly four years, especially in 1881 and 1882, the most intimate business relations with "Emma Taylor." He was buying and selling from and to her constantly. Thus by examining the list of deeds given elsewhere in this brief we will see that on April 1, 1881, he sold her the Brown property for $500 and made her a deed of it. Later in the same month he paid her back this $500 and she joined with Mrs. Brown in conveying to Martha McIntire. Two months afterwards she loaned on the Pryor property to Jenison $425. Three months later she makes a deed to Martha McIntire of the Brown, Eller, and Ackerman properties. Four months later, January 11, 1882, she bought the Eller property for $400. The *next day* she bought from Martha the Southey property for $2,000. Three months later she bought the Pryor property from Jenison for $425. Five days later she bought the Ackerman property for $300. Twelve days later she bought the Willis Herndon property, worth about $1,000. Two months and a half later she bought the Hayne property for $500. Three months later she bought the William E. McIntire interest in his uncle David's estate, worth several thousand dollars, for $200. In the same month, through McIntire, she sold the Herndon property to Forrest for $900. Four months later she sold, through

McIntire, to Alfred Brown the Hayne property for $1,100. Two weeks later she sold to McIntire's wife the interest which she had purchased four months previously in David McIntire's estate.

Can anybody be made to believe that a real-estate agent could deal so extensively and so frequently with his principal and for so long a time collect rents for her from so many properties and receive from her and pay to her so much purchase-money and not only show no accounts with her upon his books, for he says he cannot,* but completely forget that he ever collected rent for her at all, even when taxing his memory to remember it?

So as to the Alfred Brown notes. Alfred Brown, when he bought the Hayne property from Emma Taylor, May 14, 1883, gave $200 in cash and twelve notes of $75 each, payable at intervals of three months, the last maturing in three years, viz., May 14, 1886. Alfred Brown says he paid every one of them as they fell due to E. A. McIntire personally (Rec., 941). Now, McIntire says "Emma Taylor" disappeared from Washington about 1884 (Rec., 213). For whom, then, was he collecting these notes in 1885 and 1886? McIntire as usual says he has "no recollection" of collecting them. It is utterly incredible, especially when these dealings ran up into such considerable sums of money, that he should entirely forget *every single one of them* No one can believe that he was collecting these rents, paying these taxes, and collecting these notes for a person about whom he can remember so little. For whom, then, was he collecting them if not for himself, cloaked under a fictitious name, a name adopted because, being a trustee, he dared not put the title in his real name? The facts are incompatible with any other theory.

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* By Mr. HENKLE: "The witness, in response to the demand for his rent books regarding the account of Emma Taylor, has repeatedly said that he had no account with Emma Taylor for rents, and that his books show no account with her for rents" (Rec., 97).

But we are only at the very threshold. "Emma Taylor," McIntire tells us, was a woman "constantly looking out for bargains" in real estate. Yet she never found anybody with a bargain except McIntire, for we have in evidence a complete list of the properties bought and sold by her in this city, from which it appears that she never bought or sold a single piece except through McIntire's agency, and every one of them, except in the case of Alfred Brown and Forrest, the purchase-money of which was received by him as sworn to by Brown and Forrest, *eventually gravitated to his sister Martha.*

So, too, the method of recording the "Emma Taylor" deeds is irreconcilable with the theory that they were honest deeds. The testimony shows that whenever a conveyance was made to Martha McIntire or E. A. McIntire by anybody but "Emma Taylor" the deeds were *immediately* recorded, but whenever "Emma Taylor" made a conveyance the deed was not recorded for years afterwards, and most of them only after these suits were brought. Of course, if "Emma Taylor" were a fiction, with the title standing of record in that fiction, a forged deed to Martha McIntire, with Emma's name to it as the grantor, created no immediate necessity for recordation, because there was no danger of a *fiction* making a subsequent conveyance to an innocent third party for value.

The following table shows the dates of acknowledgment of the various deeds in evidence in these cases, which came into McIntire's hands as agent or principal—that is to say, those deeds the recordation of which McIntire attended to. By this table it will be seen that in every instance, when the deeds were made by grantors parting with their interest in good faith to E. A. McIntire or to "Emma Taylor" at his suggestion, McIntire caused them to be immediately recorded, while, on the other hand, the *fraudulent* deeds, including those with the forged signatures, did not go upon the record for years afterwards.

DEEDS OF BONA FIDE GRANTORS—RECORDED BY M'INTIRE IMMEDIATELY.

"*Mary C. Pryor et vir to E. A. McIntire* (Ex. A. H. No. 4; Rec., 427), deed to secure Hartwell Jenison $450; acknowledged May 27, 1880; recorded May 28, 1880.

"*Barbara Brown to E. A. McIntire*, deed to secure $400 (Ex. A. H. No. 3; Rec., 710); acknowledged June 12, 1880; recorded same day.

"*Hartwell Jenison et ux. to 'Emma Taylor'* (Ex. A. H. No. 25; Rec., 445), deed dated and acknowledged April 19; recorded April 21, 1882.

"*William E. McIntire to 'Emma Taylor'* (Rec., 103). This is the deed which McIntire fraudulently obtained from his nephew of that nephew's interest in the estate of David McIntire. It is dated December 2, 1882, and is, of course, recorded the same day.

"*Annie Ackerman to 'Emma Taylor'* (Rec., 102), deed; acknowledged April 25 and recorded April 27, 1882, probably the same day Mrs. Ackerman received her money.

"*Joseph Hayne et ux. to E. A. McIntire, trustee* (Ex. A. H. No. 20, Rec., 1009), deed to secure Hayne's note; acknowledged in South Carolina, September 23, and recorded September 28, 1881—probably the very day it reached Washington."

FRAUDULENT DEEDS—NOT RECORDED FOR YEARS AFTER THEIR DATES.

"*Barbara Brown and Emma Taylor to Martha McIntire* (a forged deed). Date of deed, April 25, 1881; acknowledged April 28, 1881; recorded April 7, 1891, lacking not quite two weeks of *ten years* between the date and the record. It was not recorded until after the filing of this bill (Ex. A. H. No. 1, Rec., 707).

"*Mary Pryor et vir to Martha McIntire*, dated May 3, 1881; acknowledged same day. This is the deed which by its erasure shows that E. A. McIntire was the original grantee. According to McIntire, the title which his sister derived by the deed was abandoned about a month after the execution of the deed, but no explanation is given of the failure to record it during the time when title was claimed

under it. The deed was *never* recorded (Ex. A. H. No. 3, Rec., 425).

"*E. A. McIntire to Hartwell Jenison.* This is the deed which McIntire made to Jenison under the foreclosure sale. It is dated June 28, 1881, but for a purpose already explained was not recorded until April 21, 1882, *nearly ten months afterwards* (Rec., 8, 207).

"'*Emma Taylor*' *to Martha McIntire*, deed in fee; conveys Southey and Pryor properties; dated May 31, 1884; acknowledged same day, but not recorded until October 14, 1886, *nearly two years and five months* afterwards (Ex. A. H. No. 14, Rec., 436).

"'*Emma Taylor*' *to Martha McIntire*, deed conveying the Barbara Brown, Eller, and Ackerman properties. It is dated September 6, 1881; acknowledged same day, but not recorded until April 7, 1891, *six years and seven months afterwards.* It was recorded *after* the filing of the bill (Ex. A. H. No. 2, Rec., 709).

"*E. A. McIntire, trustee, to Emma Taylor*, foreclosure deed of Hayne property; dated August 28, 1882; acknowledged September 1, 1882; recorded May 16, 1883, *nine months afterwards.* It was kept off the record until the sale to Alfred Brown, and was then recorded with the deed to him, in order that Brown's trust to McIntire should show a straight record title (Ex. A. H. No. 49, Rec., 460).

"*Annie Ackerman to Martha McIntire*, deed in fee; dated September 6, 1884. This was a *forged* deed and was never recorded" (Ex. A. H. No. 7, Rec., 811).

It is curious to observe how "Emma Taylor" was always on hand the moment McIntire needed her. Eller says (Rec., 81) that when "McIntire came to collect interest on his note he was sick, and had been treated so badly by McIntire that he determined to give up everything, and told him so." Thereupon, Eller says, "he went off, and came back *in about an hour and a half* and gave me a paper to sign," viz., a deed to "Emma Taylor" (Ex. A. H. No. 29, Rec., 421). So, also, when Annie Ackerman wanted to sell her property, "Emma Taylor" bobs up immediately like the harlequin in the pantomime. So in all these pretended auction sales

"Emma Taylor" was right on hand as "the highest and best bidder;" and yet he tells us he never knew her address, or where she was employed, or wrote to her to come to the office; she just "dropped" in "as often as three or four times a week" (Rec., 762). And moreover, as we have seen, Harleston, his clerk during this very period, whose business it was to be constantly in the office, never saw or heard of such a person, although she "dropped in three or four times a week." Nor, as we have seen, can he produce a living soul except his two sisters who are willing to swear that they ever saw her or knew her between 1881 and 1884. In his joint answer with his sister Martha to the sixth interrogatory annexed to the bill in the Brown case he says (Rec., 573), "We also know of *ten* of our relatives conversing with her at different times." Where are those ten relatives? He has not produced a single one of them, unless it be Emma T. McIntire.

His convenient excuse of lack of memory when pressed for the most ordinary details in regard to this creation of his imagination was not without its purpose. Had he testified to a single place where "Emma Taylor" had lived; had he stated that he had paid her or she paid him by check or in cash, as the case might be, or named some *living* person who ever saw her during 1881–'4, we could have directly contradicted each of these items of testimony and shown that she had never lived at the place named, nor was employed, as he stated, nor was paid by check, for bank checks can be traced; nor by cash, for that also could be traced to its source. We could have shown also that the person named as having known her never knew her, &c. Knowing, therefore, that if he testified specifically as to these matters he could be plainly entrapped, he wisely confines himself either to general statements or evades all inquiry by saying he does not remember. Thus it will be seen that with all his bold forgeries and perjuries he is still cunning enough to attempt to cover up his tracks in a few

of the many directions in which we have followed and exposed his rascality. But is it cunning after all? Is it not rather his only resort--to plead lack of memory—when questioned about the existence of a person who never had any existence and who, therefore, lived nowhere, was employed nowhere, was paid neither by cash nor by checks, and was known by no one.

Besides his lack of memory in this particular, he has another ready resort, and a very common one in such cases—*a fire.* He is asked if he has any letters, receipts, accounts, or written evidence of any sort showing that he ever had any transactions with her, and he answers that he did at one time have such, but that they have been lost or destroyed utterly and to the most insignificant scrap by "a fire" which he says occurred in his office a few years ago. But on cross-examination as to this very convenient fire—his refuge whenever hard pushed for explanations—his story turns out as fabulous as "Emma Taylor" is fictitious. No one can read his account of that "fire" and not be convinced that he is only adding to his list of perjuries when he talks of his burned books and papers. But the truth cannot be covered up by mythical ashes any more than by a fictitious female. His story cannot stand dissection for a moment. What is his story? He says (Rec., 670–673) his office consisted of a single room of about thirteen feet front by forty feet deep. In the back part of this office, separated from the front part of the room by a counter, was his desk, and alongside of this desk a waste-paper basket. While he was in the room one morning by himself somebody, he does not know who, threw a lighted cigar stump in his waste-paper basket, though how a stranger with a lighted cigar could get over the counter into the back part of his office and throw the lighted stump into this basket he does not explain. Anyhow, this cigar stump set on fire the papers in the basket, and, although *he was within a few feet of it*, he failed to discover it in time to stay its ravaging flames!

Remorselessly it destroyed every paper which would have shown anything about "Emma Taylor," and in addition burned up about twenty account books, including one large ledger of about 400 pages, which it so completely destroyed that nothing was left but the back and the cover.* Besides this, he would have us believe that he came near being burned up himself! Truly how great a fire a little spark kindleth. The neighbors, he says, rushed in to help him put it out, but, strange to say, he cannot name a single person who was present, and they his neighbors, too! Moreover, this marvelous fire seemed to confine its ravaging yet discriminating appetite to everything connected with "Emma Taylor." *All* of his correspondence and other papers belonging to the *same* period and the *same* properties which showed his *admitted* relations with Hayne, Jenison, Pryor, Ackerman, and Brown are considerately left by the flames, *without a mark of fire or even stain of smoke*, that they might thereafter be offered without stint as exhibits in these cases to corroborate his undisputed statements of immaterial facts; but the "Emma Taylor" letters and papers, all of which it is denied by us ever had any existence, are swallowed up and consumed to the last vestige. As this remarkable story rests alone on McIntire's testimony, we must either believe this fire to be fabulous or declare that the days of miracles are not yet over.

There were certain matters, however, in regard to this "Emma Taylor" that McIntire and his sisters could not

*This is one of those improbable stories of McIntire with which his testimony abounds. It is a fact within the knowledge of every one that a thick and compact book like a ledger of 400 pages, by the very reason of its compactness, rarely, if ever, burns up entirely, certainly not by the burning of loose papers around it; the edges char, the cover and a few of the outside pages may be destroyed, but the greater part of the book remains—soiled and smoked, it is true, but still there. It is also to be noted that McIntire does not explain how the loss of this ledger could deprive him of any evidence. He forgets that he has several times testified that he never kept any accounts with Emma Taylor.

very well say they had forgotten without practically abandoning their whole case. Thus they ventured to describe her, tell her age, and how often they had seen her. It was leaving us a very narrow margin whereon to direct our attack and show from these few particulars that they were deliberately swearing falsely as to these things, but we did it, completely and overwhelmingly.

First as to the number of times they saw her. Martha McIntire is required to make answer to the interrogatory filed with the Pryor, Brown, Ackerman, and Southey bills of complaint, which interrogatory is substantially the same in each and is as follows:

"Who is the Emma Taylor described in the deeds of April 1, 1881, April 25, 1881, and September 6, 1884?"

To this interrogatory she, in the Brown and Ackerman cases, answers:

"Emma Taylor is a lady whom Martha McIntire met some *three or four times* at the office of E. A. McIntire, 918 F street, Washington, D. C., and *once* in Philadelphia."

In the Pryor case the wording is substantially the same:

"I have seen Emma Taylor *a number of times.* I paid her the exact amount named in the deed to me, M. M. McIntire."

Her testimony before the examiner was given more than a year after she had thus four separate times made these answers to the interrogatories, and the sequel shows that she had forgotten all about them, for, knowing full well that she had never seen "Emma Taylor" and fearing to be catechised as to the time, place, and circumstances of her meeting this mythical personage, she limits herself to seeing her but *once* and not "three or four times," as she had previously sworn, and that once, she says, was at her brother's office. She, of course, does not know that she

is contradicting herself, and so, whenever it is sought to make her admit that she had seen Emma Taylor more than once, she emphatically reaffirms her statement that once, and once only, did she ever see this "Philadelphia lady." Thus the matter stood until toward the closing of the depositions, the taking of which for the defense alone ran through more than a year. Then E. A. McIntire discovers on reading the pleadings that his sister Martha has, as the saying is, "put her foot in it." He attempts to come to the rescue, and he says (Rec., 767):

"In answer to the interrogatories of this bill I think I made an error in regard to the question about when 'Emma Taylor' had been seen. *I wrote the answer myself.* I confounded what my sister Emma had told me with what my sister Martha had told me. I stated that my sister Martha had met 'Emma Taylor' three or four times, one time in Philadelphia, whereas my sister Emma had told me that. My sister Martha had not met her that number of times."

Even if it were true that E. A. McIntire wrote the answer to this interrogatory, which Martha was required to answer, it is difficult to believe that an honest person would by an oversight read, sign, and swear to a written statement of this kind if it were false, but when it is done not once, but four times, on four different occasions, it is thoroughly incredible; but E. A. McIntire, instead of pulling his sister's foot out of the trap, gets both of his own feet into it, for if the court will refer to the *original* answer of Martha in the Pryor case, a lithographic copy of which we have inserted in this brief, and the original of which is brought here for your inspection, it will be seen that, so far from its being written *by him*, as he swears, it is in Martha's *own handwriting and signed by her!* Thus is the old saying verified, that "one lie leads to another," and not only to another, but to several, for his sister Emma, whom he says he had in mind when answering this interrogatory, practically says she *never met Miss Taylor in Philadelphia.* Thus, on page

Answers made by defendant Martha McIntire to Interrogatories.

1. Emma Taylor was a Philadelphia lady who lived for awhile in Washington D.C but is now living in the west.

2. I have seen Emma Taylor a number of times. I paid her the exact amount named in the deed to me. Mr. McIntire

And having fully answered the several paragraphs in the original and amended bills, these defendants now pray that they may be dismissed with their costs

Edwin A. McIntire
Martha McIntire

299 of the Record, she says she saw Emma Taylor at the Brown sale in 1881:

"Q. Well, you say that was the *first* time you ever met her?
"A. Yes.

* * * * * * *

"Q. Now, when did you next meet her?
"A. I met her at the office of my brother, Edwin A. McIntire, and in the street *after* I moved here.
"Q. Well, how often did you meet her at your brother's office or in the street?
"A. In all about three or four times."
Rec., 309.

So neither Martha nor Emma ever told him about meeting Emma Taylor *in Philadelphia.*

But again: Martha, let us not forget, insists upon it that she saw her but *once*, and that was at her brother's office, yet if E. A. McIntire tells the truth Martha saw her not only at his office, but at Helmick's office. Martha says (Rec., 137):

"Q. You say that you only saw Emma Taylor *once?*
"A. Yes, sir.
"Q. When did you see her?
"A. In the office of my brother, Edwin A. McIntire.
"Q. When was it that you saw her?
"A. I do not remember.

* * * * * * *

"Q. Who introduced you?
"A. I do not remember whether my brother or his clerk introduced me."

On the other hand, E. A. McIntire, on page 268 of the Record, when telling us about taking Barbara Brown to Helmick's office and there meeting Emma Taylor and fixing up the "joint deed," says that Martha was there *with Emma Taylor* and surrendered the $400 note to Barbara Brown and paid her one hundred dollars.

"Martha McIntire surrendered a note that she held."
"Q. Surrendered whose note?
"A. The note of Barbara Brown.
"Q. To whom?
"A. To Barbara Brown. *They were both there at the time.*"

Now, then, let us look into their testimony in regard to Emma Taylor's *age*. We must premise as to this that the woman whom the witnesses Atkinson, Harris, Shafer, and John Taylor say they saw prior to 1880 cannot be the woman that the McIntires claim signed these deeds, because, while those witnesses substantially agree about the age of *their* Emma Taylor, the McIntires give her an entirely different age, showing, if they are testifying to the truth, that the McIntire "Emma Taylor" is *quite another woman!*

Thus Atkinson says (Rec., 150) she was between twenty and thirty (quite a wide margin, it must be conceded). Mrs. Harris says (Rec., 336) she was between twenty-five and thirty. Shafer says (Rec., 154) if she were now living she would be about forty years old, which would make her about twenty-seven in 1879, when he saw her. John Taylor says she was between twenty-four and twenty-five.

Now, what does Martha say? She was asked (Rec., 138) how old was "Emma Taylor" when she saw her, and she answers:

"A. Middle age; *forty or forty-five years of age.*"

Nor is Emma T. McIntire much better:

"I would say she was between twenty-five and thirty-five.

"Q. That is a very wide margin, between twenty-five and thirty-five. A woman at twenty-five does not look to be thirty-five years of age. Can you not come closer than that?

"A. I cannot to a lady's age.
Rec., 315.

* * * * * * *

"Q. Well, now, between twenty-five and thirty-five might

make her only twenty-six or it might make her only thirty-four years of age?

"A. Well, she might have been *twenty-six* or thirty-four." Rec., 316.

And E. A. McIntire gives her two ages:

"She was a lady of medium height, about *thirty* years of age; I should say thirty or *thirty-five*" (Rec., 213).

And again, on page 237, forgetting that he had previously made her thirty or thirty-five, he says:

"She was *twenty-four* or twenty-five years of age in 1881."

That was the time Martha McIntire thinks she saw her, and according to her she was *forty-five*. So that these McIntires give us our choice of any age for "Emma Taylor" between twenty-four and forty-five!

And so we might go on contrasting by the "deadly parallel" these contradictory statements with which their testimony abounds. True it is that in any large body of testimony contradictions are very likely to be met with, even when honest witnesses are testifying, but they are of trivial and immaterial matters, not such as here sworn to point-blank both ways. Thus, to give another example, McIntire is handed by his counsel the original deed of "Emma Taylor" to Joseph Forrest—the *Emma T.* in which is so strikingly like the signature of *Emma T.* McIntire that we have contrasted them at the top of the large photographic exhibit of the Emma Taylor and Emma T. McIntire signatures:

"Q. State what you know of the signature of Emma Taylor to that deed.

"A. In this deed I know that to be her signature; *I saw her sign it* there and *I remember it distinctly.*"

And, again, a couple of lines below:

"I know it is not the signature of Emma T. McIntire; I know it to be the signature of Emma Taylor. *I saw Emma Taylor write it*" (Rec., 231).

But when asked some time later about the very same deed by complainant's counsel:

"Q. Did you see her make that signature to the deed of December 30 from Emma Taylor to Joseph Forrest?"

he forgets what he has previously sworn to so positively, and says:

"A. *I have no recollection of seeing her write that signature.* I have no recollection of it whatever now, but I may have seen her" (Rec., 278).

A little lower down on the same page will be found the following, which we will let speak for itself. His attention is called to the palpably varied character of the Emma Taylor signatures—*e. g.*, the signature to the Forrest deed and the totally unlike signature to the Barbara Brown deed. Though claiming to be an expert (Rec., 278), he swears, whether honestly or not will be for your honors to say:

"I do not think those signatures are *varied.*"

At page 653 of the Record he says that he erased no part of the "joint" deed from Barbara Brown and Emma Taylor to Martha McIntire except the name of David McIntire; that he prepared the deed at his office, but did not fill up the smaller blanks (for the insertion of the pronoun, &c.) until he got to Helmick's office, when, finding Emma Taylor there, he filled them up in the feminine gender and plural number.

"I state now positively, upon looking at the deed, that the *smaller blanks were not filled out at that time,*" viz., at his office.

On the other hand (Rec., 231), he is equally positive that the smaller blanks had been filled up, and that when he got to Helmick's office he not only erased David McIntire's name, but "altered the deed in other regards," viz., by

erasing these personal pronouns so as to change them from masculine to feminine.

"The deed was altered in *other regards* so as to make the numbers plural instead of singular, and to make it feminine gender instead of masculine where the *pronouns* occur."

And lower down on the same page:

"I scratched out the name David McIntire because he declined to take the property or hesitated about it, and I *altered the rest of the deed* so as to conform to that alteration."

But we shall presently come back to this David McIntire story.

Another glaring evidence of the fraudulent character of these deeds will be found in the irreconcilable explanations which are alternately given by McIntire and his sister Martha as to the reasons why the deeds were not recorded.

The explanation as given in the answer in the Brown case for not recording them will be found in the Record, p. 572, in which, after admitting the failure to record, it is said:

"The delay in recording them was pure carelessness and ignorance on the part of the defendant Martha McIntire, who was under the impression that the recording of deeds was solely to protect the grantee in the event of the loss of the deed, and as she had the deeds in a vault she felt perfectly safe."

If Martha McIntire was the frequent purchaser of real estate and the large and frequent lender of money on deeds of trust, as she claims she was, her experience going back to 1876, when she yet lived in Philadelphia, it would seem remarkable that she should not have learned either from her brother or some one else the necessity for recording deeds, but be that as it may let us see what the testimony discloses:

On the 6th of May, 1881, while she was still living in Philadelphia, E. A. McIntire claims to have purchased for

her the Pryor property for the sum of five dollars, subject to encumbrances of about $500. On cross-examination he says:

"Q. When you took this deed from Pryor and wife to your sister, Martha McIntire, why did you not record it?

"A. I gave it to her. I do not know why she did not record it.

"Q. Would you give your sister the deed for her to record? Would you not record it yourself?

"A. No, sir; *I would let her record it for herself.* She *knows* where the record office is as well as I do, *both here and in Philadelphia.*"

Rec., 245–'6.

Now, then, let us not forget that McIntire never varies from this position. He insists, whenever asked about it, that he always gave Martha her deeds to record; that he never undertook to attend to that part of her business. This is important to remember, because we shall presently see that Martha flatly contradicts him. It is claimed by McIntire that "Emma Taylor" conveyed Martha the Southey and Pryor properties May 31, 1884, but the deed, it is admitted, was not recorded until October 14, 1886. Now McIntire is asked (Rec., 262):

"Q. Why was that deed kept off the record until October 14, 1886?

"A. I have no idea at all; *it was left in the possession of my sister, Martha McIntire.*

* * * * * * *

"Q. Now, you have no explanation whatever to give why this deed was kept off the record from May 31, 1884, until the 14th day of October, 1886?

"A. Nothing more than the explanation which she makes herself. It was her doings. *She locked it up in the safe-deposit company.*"

This safe-deposit vault was not rented, as we shall see, until March, 1885, so this excuse will not pass muster.

Again, the Barbara Brown and Emma Taylor joint deed of April 25, 1881, to Martha McIntire was not recorded until April 7, 1891. In the meantime, on September 6, 1884, "Emma Taylor" conveyed the property a second time to Martha in the same deed that conveyed the Ackerman and Eller properties. He is interrogated (Rec., 266) as to this:

"Q. Now, you say that the reason this Barbara Brown property was included in this deed of September 6, 1884, was because the previous deed made by Barbara Brown and Emma Taylor was not recorded. Is that the reason?

"A. I do not think I said that. I said it could not be found for some reason or other; possibly because it was not recorded, but I have no recollection of that. I say that might have been the reason.

* * * * * * *

"Q. So, as a matter of safety you put it in this deed of September 6, 1884; is that correct?

"A. Yes, sir.

* * * * * * *

"Q. Having had the experience of your sister Martha failing to record the first deed from Emma Taylor to her of the Barbara Brown property, you had Emma Taylor make another deed of conveyance to your sister of the same property, and yet you did not look after the recording of that deed?

"A. It was not my business to do that. I very likely *suggested* it at the time, but I do not know."

Rec., 266–'8.

"Q. When a deed was made to her [Martha] of property you always gave her the deed to record, and you never recorded them yourself?

"A. Yes, sir. I would not say always, but it is my impression *that I always did.*

Rec., 318.

* * * * * * *

"Q. You sent on the deed of the Barbara Brown property to your sister in Philadelphia, did you not?

"A. I either sent it to her or took it to her there. I do not know which, but I gave it to her.

"Q. Why did you not record it before you sent it to her?

"A. I have no recollection of the circumstances at all after the deed was made.

"Q. Is it likely that you, being a real-estate man, would have purchased a piece of property for your sister and then send the deed to her without having it first recorded?

"A. I found a deed this morning which was in that condition. I do not know whether I gave it to her or mailed it to her or sent it to her by some one of the family.

"Q. Did you intend that she should send it back to you to have it put on record?

"A. If I had a clear recollection of how it was gotten to her I could answer that question, but I cannot because I do not know."

Rec., 657.

These excerpts speak for themselves. They show that according to McIntire it was his sister's business to record these deeds. Now, let us see how flatly Martha's account of this matter contradicts her brother's.

At page 752 she is interrogated by her counsel in reference to the deed of the Ackerman and Eller properties, which we will remember are claimed under *one* deed from "Emma Taylor," dated September 6, 1884.

"By Mr. HENKLE:

"Q. What did you do with it immediately after your brother gave it to you?

"A. I took care of it.

"Q. Why did you not record it?

"A. Well, I do not know. I suppose it was carelessness. There are a good many things that I ought to have done, but, like other people, I forget things sometimes.

"Q. You did not record the Southey deed either?

"A. There were *two* or three deeds that were not recorded."

[NOTE.—Instead of "two or three" there were SEVEN deeds not recorded until long after their date. See the list *ante*.]

"Q. I asked you about the Southey deed. Did you record that?

"A. I do not remember.

"Q. Did you ever record a deed from Emma Taylor immediately after you got it?

"A. *I never recorded deeds in this city. My brother and sister attended to that.*

"Q. After you moved to Washington in 1882 and bought these several properties from Emma Taylor at different times—I believe you have testified that you bought the Barbara Brown property from Emma Taylor, that you bought the Southey property from Emma Taylor, that you bought the Ackerman property from Emma Taylor, and that you bought the Pryor property from Emma Taylor—how did it happen that you did not record the deeds that you got from Emma Taylor until long after you got them?

"A. *My brother and sister attended to that part of the business for me.*

"Q. You never attended to the recording of deeds?

"A. *I never recorded deeds in this city.*

"Q. You left that to him?

"A. I thought my sister, being at the office so often, could attend to that for me.

"Q. How could they record the deed for you if you had it?

"A. *I gave it to them to record it.*

"Q. Either you or he was careless. Which one was it?

"A. I take the blame.

"Q. When you got these deeds did you give them to him to record?

"A. No, sir; I never thought anything about the recording part.

"Q. What did you do with them?

"A. *I put them in the safe-deposit company.* [Let us not forget that she had no safe-deposit box at that time.]

"Q. Then you did not give them to him to record?

"A. Not at that time.

"Q. There are some deeds produced here in evidence since these cases began which were never recorded——

"A. (Interposing.) That was carelessness.

"Q. Whose carelessness?

"A. My carelessness.

"Q. Then you did not give them to him to record?

"A. No, sir; I could not have given them to him to record.

"Q. [Counsel growing more and more nervous.] There are certain deeds which were not recorded at all until after these suits were recorded (*sic*)—certain deeds which you had and produced in evidence here?

"A. Yes, sir; there were several.

"Q. Now you say that you gave your brother those deeds to record and that he did not do it?

"A. *No, sir; I did not do it at all.*

"Q. [Counsel relieved.] You are mistaken about that?

"A. Yes, sir. You know there were other houses besides these. I have other houses besides these.

"Q. [Counsel getting into the mire again.] You took your deeds *and put them in the safe-deposit box?*

"A. Yes, sir."

Now follows a bit of leading interrogation so palpably intended to put words in the witness' mouth and to call to her mind a previous "coaching" that comment is scarcely necessary, except to call the court's attention to the manner in which she echoes the answer prepared by E. A. McIntire and heretofore quoted, viz:

"The delay in recording them was pure carelessness and ignorance on the part of the defendant Martha McIntire, who was under the impression that the recording of deeds *was solely to protect the grantee in the event of the loss of the deed, and, as she had the deeds in a vault* [safe-deposit box], *she felt perfectly safe.*"

"By Mr. HENKLE:

"Q. What was your idea about recording deeds?

"A. *Well, my idea was if I put them in a safe place it was safe enough.*

"Q. That is, that the recording of it was only to preserve it?

"A. Yes, sir.

"Q. *And if you was sure that you had the deed preserved it was immaterial, according to your idea, whether it was recorded or not?*

"A. Yes, sir; I thought my property would be safe.

"Q. Was that the reason you were not particular about that?

"No answer to last question."

This testimony of Martha's was so entirely at variance with the "coaching" that she had received and with her brother's testimony that it necessitated her counsel coming to the rescue; but matters were only made worse, as we shall see, for the woman absolutely knew nothing about the facts and circumstances of these deeds until drawn into the case by her brother's chicanery. Her "coaching" was imperfect, and she, in her ignorance, frequently "jumped the traces." We should not fail also to observe that both Martha and her counsel lose sight of the fact that *all* of these deeds from "Emma Taylor" were alleged to have been executed to Martha over a year—some of them several years—prior to March 3, 1885, that being the date when she (Martha) first obtained her box in the safe-deposit company, so that excusing herself for not recording these deeds because "she had them in a vault," when she did not get the "vault" for years afterwards, will not suffice.

"By Mr. HENKLE:

"Q. Where did you keep your deeds?

"A. I kept them for a while in the safe-deposit company after we got a box there.

"Q. When did you get the box?

"A. At the time of the first inauguration of President Cleveland. I do not know what year that was.

"Mr. EDWIN A. MCINTIRE: 1885.

"WITNESS: Yes; 1885.

"Q. Did you ever give your brother your deeds to keep after you got that box?

"A. I do not remember. I might have for a while. I do not see why I should have given them to him after I once put them in the box.

"A. *As a matter of fact, did you not take your deeds,* WHEN YOU GOT THEM, and put them in your box?

"A. Yes, sir; that is my recollection.

"Q. Did you ever give them to him to record?

"A. *Oh, the record part. I either gave them to him or my sister.*

"Q. Why did they not do it?

"A. *I guess they did when I gave them to him.*

"Q. Some of these deeds have not been recorded. *Did you ever give them to your brother to record?*

"A. *Either to him or my sister.*

"Q. And he failed to record them?

"A. [Remembering this much of her 'coaching.'] No, sir. I do not want to throw the blame on him, for whatever carelessness there was——

"Q. Then why did you not record your deeds?

"A. *I do not know.* It was carelessness and ignorance on my side, I suppose. I do not know what else to call it.

"By Mr. MACKEY:

"Q. You say that when you got the deeds from your brother of these various properties which you bought from Emma Taylor *you took the deeds and put them in the safe-deposit company without recording them?*

"A. *Yes, sir.*

"Q. *You are positive of that?*

"A. *Yes, sir; they were not recorded. That is the way it was.*

"Q. You have bought and sold a good many properties, have you not?

"A. Yes; several.

"Q. Did you not know that it was necessary to record a deed?

"A. Well, I know it now; yes, sir.

"Q. But you never knew it before?

"A. Well, people have to live and learn.

"Q. You had been buying property and loaning money on mortgages and things of that sort, and you never knew until this suit commenced that it was necessary to record a deed?

"A. [Witness beginning to recollect her 'coaching.'] No; you do not understand me. I knew it was necessary, but I did not think it was absolutely necessary, and that if I kept the deed in a safe place it was all right.

"Q. And your brother never said anything about it?

"A. I dare say he thought I had them recorded. I have recorded deeds in Philadelphia. I have been to the recorder's office there.

"Q. You have recorded deeds immediately after you have bought property, have you not?

"A. [Again forgetting her lesson.] *I have not recorded any deeds in this city at all.*

"Q. You had your brother record them?

"A. [Still oblivious.] *My brother or my sister; they attended to my business of that kind.*"

And so it continued for two or three pages more, the poor witness see-sawing from one answer to another as she went from the hands of one counsel into those of the other and showing palpably that she knew nothing of what she was talking about and depended entirely upon her confused recollection of her brother's coaching.

E. A. M'INTIRE AS A NON-MI-RECORDO WITNESS.

The following partial synopsis of McIntire's recollections or, rather, non-recollections of "Emma Taylor" and other important matters in these cases speaks for itself:

"*I have no recollection* of her exact residence. I do not think I ever addressed her a note in this city (Rec., 246).

"*I do not remember* collecting any rent for her. I recollect paying her money, but *I forget* what the money was for, whether for rent or not. *I do not remember* writing to her in this city (Rec., 247).

"I remember writing, but *I do not remember* the subject of the correspondence. I have no letters from her in regard to this Pryor property. I may have letters of hers in regard to the *other* properties. [He produced no such letters, however] (Rec., 248).

"*I have no recollection* now whether I have any papers having Emma Taylor's handwriting other than the papers I have produced (viz., three deeds; we produced the other two). *I am not positive* whether, in making the search for these deeds, I came across any papers having her handwriting (Rec., 249).

"*I have no distinct recollection* how the $425 borrowed by Mr. Jenison from her through me was paid for, by cash or in check (Rec., 250).

"My sister paid Emma Taylor $2,500 for the Pryor property and the Southey property, but *I do not recollect* whether

any price was put upon one and so much for the other. There might have been something said about the separate values, but *I have no recollection* of it now. I could not say positively how the $2,500 was paid to Emma Taylor, whether by check or in cash (Rec., 261).

"*I do not recollect* paying it by check, but I do recollect that the payment was made (Rec., 262).

"*I do not remember* taking the deed of October 14, 1886, from Emma Taylor to Martha McIntire to the recorder's office, and *I cannot state* who got it from the recorder's office (Rec., 262).

"*I have nothing whatever to show* my payment of $2,500 to Emma Taylor as consideration for these two pieces of property (Pryor and Southey) except the acknowledgment of the receipt of the money in this deed. Emma Taylor *never told me* where she lived, *to my recollection*. *I have no recollection* in any of these transactions of having occasion to write to Emma Taylor, asking her to call at my office. *I never knew* where she lived (Rec., 263).

"*I do not remember* how the purchase-money was paid her for the Ackerman, Eller, and Barbara Brown properties recited in the deed of September 6, 1874, whether in cash or by check. *I have not been able*, so far, *to find any memoranda* in my office which would show whether Emma Taylor paid for the Pryor and Southey properties in cash or by check, and *I do not remember* how my sister Martha gave me money, whether cash or by check, to pay for the Ackerman, Eller, and Brown properties described in the deed of September 6, 1884 (Rec., 264).

"*I do not remember* the prices that were put upon these three properties by Emma Taylor. *I do not recollect* any conversation which occurred about them with Emma Taylor or Martha McIntire about the price (Rec., 265).

"*I do not remember* what the reason was for getting a second deed from Emma Taylor to my sister of the Barbara Brown property (Rec., 266).

"*I do not remember* particularly why $100 was the consideration price put in the deed of Emma Taylor and Barbara Brown to my sister (Rec., 271).

"I thought Emma Taylor was engaged in one of the departments. I was under that impression all the time, because she used to come down F street after the hour the departments would close, but I never asked her in what de-

partment she was employed. [See testimony of Ames, Government official and compiler of the 'Blue Book.' He says no such person as 'Emma Taylor' was in the Government employ in Washington at that time.] *I have no recollection* of writing any letters to her to any of the departments. She has written me letters [which he never produced], but not many. They were not strictly business letters, but *I have no distinct recollection* of receiving any others. She wrote such a hand as is written by any one who attended the public schools in Philadelphia (Rec., 276).

"The handwriting of Emma T. McIntire and Emma Taylor is a *little alike*—not much. Emma T. McIntire and Emma Taylor learned to write in Philadelphia. All people of the same school in Philadelphia write the same kind of writing, as all do of the same schools here. I saw her make the signature on the deed of April 25, 1881 (Rec., 277).

"*I am not certain* that there is an erasure in that signature. It might be on the other side of the page or it might have been there before. It appears now in holding the paper up to the light that there is an erasure near the signature. *I do not know anything about it;* although I saw her write the signature, I did not see her make the erasure (Rec., 277).

"*I do not think* she made the erasure while making that signature. *I do not think* the signatures on these deeds are varied. *I do not know* whether I have any specimens of Emma Taylor's signatures besides what we have here [namely, the deeds] (Rec., 278).

"Emma Taylor sold the piece of property to Joseph Forrest, and he gave the check to me as agent for her. I got the money on the check and turned it over to her. *I do not remember* whether I turned it over in cash or gave her my check. *I do not remember* whether in any of these transactions I ever paid Emma Taylor by my check (Rec., 279).

"*I do not know* whether I have any accounts on my books showing whether I paid this Forrest purchase-money to Emma Taylor (Rec., 280).

"*I have no recollection* who collected the rents of the Hayne property while Emma Taylor owned it (Rec., 281).

"*I do not recollect* whether I collected that rent. *I could not say whether* I had anything to do with the collection of the rent of the Ackerman property during the time that Emma Taylor owned it. *I could not say* whether I had anything to do with the collection of the rents or not during

that interval; *I have no recollection. I have no recollection* who attended to the payment of the taxes during that period and looked after the property generally. *I have no recollection* who collected the rents of the Pryor property after [between] the sale to Emma Taylor and the conveyance by her to Martha McIntire. If any rents were collected *I cannot say* by whom they were collected. I mean to say that in any one of these cases, in the interval when the title stood in Emma Taylor, that *I have no recollection* who attended to the property and looked after it, paid the taxes, and collected the rents that were collected, *and I have nothing on my books to show.* My books of that date are destroyed; I mean destroyed by fire (Rec., 282).

[NOTE.—And yet *after* the court had decided "Emma Taylor" to be a myth and McIntire a fraud, and sent these cases to the auditor to state an account for the rents and profits, McIntire, to lessen the amount chargeable against him, brought in and claimed credit for bills of taxes, repairs, &c., paid on these properties by him during this very period when he says Emma Taylor owned them and he had nothing to do with them.]

"I might have told Mr. Forrest, the gentleman who bought the property, that Emma Taylor was a lady residing in Philadelphia, although I said yesterday that my impression was that Emma Taylor was an employé of one of the departments. If I ever told Mr. Forrest so I mentioned it in the same sense that applies to voters who claim residence there and are employed here, or I might have meant that she was in Philadelphia temporarily. *I have no way of refreshing my memory* as to who was the holder of the notes which were given by Alfred Brown to Emma Taylor [for the Hayne property] and paid by him. The notes were not in my possession and were not kept by me for collection during the time that they were maturing."

[NOTE.—See testimony of Brown where he swears that McIntire kept the notes and he called at his office and paid them to McIntire (Rec., 283).]

"*I have no recollection* whether I recorded the deed for

Emma Taylor or gave it to her to record, which conveyed these properties to her (Rec., 284).

"*I cannot recollect* when I last saw Emma Taylor. *I have no idea* as to the time. *I have no recollection* who besides Emma Taylor bid at the Hayne, Brown, and Pryor sales. These sales were advertised, but I cannot recollect in what papers (Rec., 306).

"I always gave my sister Martha the deeds of her property to record, and never recorded them myself. I would not say always, but that is my impression—that I always did.

"*I have no recollection* who took them off the record—that is to say, who went to the recorder's office and got the deeds."

[NOTE.—See testimony of Wilson and Schayer, deputy recorder and clerk, and the certified copies of the Martha McIntire deeds, showing every one of them was delivered to E. A. McIntire.]

"My recollection is that I gave Emma Taylor her deeds to record, and that I did not record them myself, but *I have no knowledge or recollection* of who got them back from the recorder's office (Rec., 308).

"I mean to say that *I have no recollection* of any of these deeds being delivered to me by the recorder of deeds or by some official in his office. *I have no recollection* of collecting any rents for Emma Taylor of any of these properties—the Hayne, Brown, and the Southey properties (Rec., 309). [See testimony of the tenants, all of whom swear that they paid McIntire the rents during the time he claims 'Emma Taylor' owned these properties.]

"*I have no recollection* of keeping an account for Emma Taylor in that book (his ledger, which he says was burned up). *I do not remember* who paid the taxes of the Forrest property during the time that Emma Taylor owned it (Rec., 310).

"*I have no recollection* about the $100 consideration in the joint deed of Barbara Brown and Emma Taylor to my sister. *I have no recollection* of any amount being paid. I am under the impression that there was some little change handed to Barbara Brown because she was a very poor woman" (Rec., 313).

MARTHA M'INTIRE NOT A BONA FIDE PURCHASER FOR VALUE.

Let us now examine Martha McIntire's story in regard to her financial resources and her claim to being a *bona fide* purchaser for value. Of course, we cannot undertake in the limited space and time at our disposal to dissect the whole of it; we shall, therefore, only take it up in its most material parts.

She begins by saying that in her youth she was economical and worked first at book-sewing, though she cannot tell how long.

"Q. How long were you engaged in the book business?
"A. I do not remember how long."
Rec., 115.

Then she says she also engaged in the real-estate business (Rec., 116), and would have us believe that she made a great deal of money at that, but on cross-examination it simmers down to a sale of one house for her father, Edwin T. McIntire (who died in 1876), for which she cannot tell what commission she got.

"Q. What did that bring you; how much? Did you make anything on it?
"A. I do not remember.
"Q. Well, fifty dollars?
"A. I made over fifty dollars. I made one hundred dollars, anyhow. He gave me that much, anyhow."
Rec., 116.

Then she sold a house for a Mr. Jacob Smith:

"Q. What did you make on that transaction?
"A. I did not make quite as much in that transaction."

And she sold some houses for her brother, E. A. McIntire (Rec., 116).

"Q. Did you sell for anybody else?
"A. I guess that is about all. I had *five or six* houses to sell."

Thus accounting for $250 or $300 of the "two or three times two or three thousand dollars" which she claims to have had when she came to Washington in 1882 (Rec., 118), and with which she would have us believe she loaned out on notes—fifteen or twenty thousand dollars, about half of it to a man by the name of Partello.

"Q. That is, at one time Partello owed you as much as ten thousand dollars?
"A. Yes, sir."
Rec., 122.

And yet her brother, E. A. McIntire, says that since 1879, when Henry McIntire died, she, Martha, has not invested much in notes. "Since his death she has not made very many transactions in notes" (Rec., 223).

But let us not digress. In addition to this $250 or $300 accounted for as having been earned in the real-estate business she got money from her father. "He gave me several thousand dollars" (Rec., 118), which she sent on to her brothers to invest for her. Then she is asked whereabouts in Philadelphia she kept this "several thousand dollars" that her father gave her.

"Q. Where did you keep it in Philadelphia—under your pillow or deposited in bank?
"A. For a little while in a savings fund, until I had an account in bank there. They [the savings bank] paid small interest.
"Q. What savings fund?
"A. The Philadelphia savings fund.
"Q. That place at the corner of Walnut and 4th streets?
"A. Seventh and Walnut streets."
Rec., 119.

These, then, are the two places where she kept this "several thousand dollars" before she sent it on to her brother for investment here in notes, viz., the Philadelphia savings fund and another bank of general deposit, which she afterwards names as the Central National Bank of Philadelphia:

"Q. You never had dealings with any other banks?
"A. No, sir.
"Q. Only with the Central national bank and the Philadelphia savings fund?
"A. Yes, sir."
Rec., 120.

Let us look into the savings fund first:

"Q. When did you have money there?
"A. Off and along. You can put in small amounts there, and I put in a little from time to time—that is, when I did not want to keep it in the house.
"Q. What was the highest sum you ever had there?
"A. I think when I drew it out—all of it out—I think about six years ago—I drew out *between three thousand and four thousand dollars*—that is, just little driblets that I put in. That was the last of it, and I closed up the account then."

Fortunately we sent to Philadelphia and took the deposition of the cashier, Purvis (Rec., 390). He gave the statement of Martha's account with the savings fund from beginning to end (Ex. A. H. No. 57; Rec., 466). By it it appears that the first deposit of $225 was made June 30, 1874, and the last deposit August 29, 1877. Instead of finding, as from the foregoing testimony we would have a right to expect, a large number of deposits, we actually find that there were made in all these years just *eleven* deposits of comparatively small sums. These are the deposits: $225, $100, $270, $50, $60, $20, $140, $110, $60, $75, and $100, a total of $1,210 in three years and two months.

But this is not all. This balance was allowed to remain in the savings fund without a single draft against it until February 9, 1887, when, with the accumulated interest, it amounted to $1,824.20, and not between *three or four thousand* dollars, as she swears. Moreover, since the time of the first deposit until it was finally drawn out there had never been taken out a dollar of it until it was all drawn in 1887. It

follows as a natural sequence that *not one dollar* of this money went to pay "Emma Taylor," whose first alleged transaction with Martha was in April, 1881, and the last September 6, 1884.

Now let us take up the only other bank in which she says she deposited her money as she got it when they lived in Philadelphia (Rec., 119). We have the statement of this account direct from the bank (Ex. A. H. No. 53; Rec., 464. See testimony of Wm. Post, Rec., 389).

"*Statement Showing the Account of Martha McIntire with the Central National Bank of Philada., Pa.*

"Account opened in the individual ledger:

"Sept. 5, 1881. By cash	$500	
"May 20, 1882. " "	109	
" " " " "	6,210	
" Total	$6,819	00
" Payments:		
"July 19, 1882	$4,925	
"Dec. 2, 1882	1,894	
	$6,819	00

Compare, now, her testimony as to the number and size of her deposits in this bank with the account itself:

"Q. How did you deposit your money in that bank—as you got it, one hundred dollars at a time, or two hundred dollars, or how?

"A. I put larger sums in the bank.

"Q. How did you deposit these?

"A. When I got fifty dollars or seventy-five dollars or one hundred dollars or whatever it happened to be, *I then took it there and put it in.*

"Q. How long were you depositing in that bank?

"A. I do not remember how long; not a very great while.

"Q. You say that you deposited altogether how much in the Central national bank?

"A. I did not say how much. I got a letter from them which has been put in evidence here, and I guess that will tell. I think it was about six thousand dollars or sixty-eight hundred dollars.

* * * * * * *

"Q. How did you get that much money to put in that bank?

"A. Why, it accumulated from time to time when I got any money on account.

"Q. And you just put it in there?

"A. My father two or three different times gave me one thousand dollars.

"Q. You mean one thousand dollars *each* time?

"A. Yes, sir.

"Q. You would put that in the bank *as you got it?*

"A. Well, I do not really know whether I did or not. I put it there for safe keeping, as I did not want to keep it in the house.

"Q. When your father gave you one thousand dollars you would deposit it in the bank?

"A. Yes, sir; I suppose so. *I did not want the money in the house, and I put it in the bank.*

"Q. And that bank was the Central national bank?

"A. Yes, sir."

Rec., 120.

So, then, this bank account which, as we see, is made up of but three deposits (or rather of only *two*, because two of them were made the same day), she tells us was made up by deposits of a thousand dollars each that her father gave her at two or three *different* times and which she put in this bank *as she got it!* A story palpably false as shown by the account itself. But it is worse than this. The first deposit made in the bank was on September 5, 1881, and *her father died in 1876* (Rec., 304), so she could not possibly have deposited it in this bank *as she got it*, even if we can believe her story that he gave her two or three thousand dollars in that way. That it is a cock-and-bull story is made manifest by Emma T. McIntire's account of it, for she says her father

gave Martha "about *five* or *six* thousand dollars, I should judge" (Rec., 304)—that is to say, she goes Martha's story and multiplies it two or three times! But let us return to Martha, who made, as we have seen, but *two* deposits in this bank:

"Q. How many deposits did you make in the Central national bank?
"A. I do not know.
"Q. Did you make fifty?
"A. *I do not remember.*
"Q. Give us an idea.
"A. I made several deposits.
"Q. Did you make twenty-five deposits?
"A. *I cannot remember.*
"Q. Cannot you remember whether you made ten deposits?
"A. I suppose I made *more than ten* deposits."
Rec., 120.

[NOTE—As we have seen, she made but *three.*]

Where did Martha get this money? Let us remember that *the whole family moved here permanently* June 15, 1882, and we will require no elaborate argument to convince us that it was the proceeds of some property sold by them the month before they shook the dust of Philadelphia from their feet, but however that may be Martha having sworn that this $6,819 was made up of sums of one thousand dollars each, deposited at two or three different times and of other sums of "$50 or $75 or $100, just as I got it," and this story being shown to be absolutely false, she attempts another "swear" at it, for be it understood she never in any of her statements confines herself to one version. They are as changing and variegated as the rainbow, and as fading also, we might add.

Her next version is that this $6,210 consisted of the proceeds of some "one or two bonds—Pennsylvania State bonds. I do not remember how many" (Rec., 131).

"Q. How did you come to deposit that money which you had in Philadelphia—six thousand and odd dollars at one time in Philadelphia?

"A. I sold some bonds there.

* * * * * * *

"Q. How many bonds did you sell?

"A. *One* or *two* bonds—Pennsylvania State bonds. I do not remember how many. The time had run out and I sold them.

"Q. Do you remember how many they were?

"A. No, sir.

"Q. Whether one, two, three, or four?

"A. They were several. [She has just said they were one or two.]

"Q. What did they amount to each—one thousand dollars each?

"A. I do not remember. I did not try to remember, because it was all right.

* * * * * * *

"Q. Now, that deposit, you say, was made in consequence of the sale of bonds—Pennsylvania bonds?

"A. Yes, sir.

"Q. And you got that money and you went to the bank and deposited it?

"A. Yes, sir.

Rec., 131.

* * * * * * *

"Q. When did you buy those bonds?

"A. *I do not remember.* I had them for some time.

"Q. One, two, or five years?

"A. *I do not remember.*

"Q. You would not swear whether you had them one year or five years?

"A. *No, sir; I could not swear to it.*

Rec., 133.

* * * * * * *

"Q. Did you have this money with which you bought these bonds—the Pennsylvania State bonds—on deposit anywhere before you bought these bonds?

"A. No, sir; I do not think so, but if I had it anywhere it

was just in the *Savings Fund bank* [another fatal anachronism]; that was all.

"Q. It took about five thousand dollars—somewhere in that neighborhood; it may be a little over five thousand dollars—to buy those Pennsylvania bonds. Now, from so large an item as that you ought certainly to be able to tell us where you got the money with which you bought those bonds.

"A. *I do not remember at all,* because I got money from time to time, as I said before, and had it in the *Savings Fund bank* there [from which we have seen she never drew out a dollar]. Sometimes we kept more money in the house than we ought to have kept.

Rec., 133.

* * * * * * *

"Q. Now, the long and short of it is that you cannot tell us where in the world you got this five thousand dollars with which you bought those Pennsylvania bonds?

"A. Well, it was money that I had saved up and earned and that had been given me from time to time that I bought those bonds with, and then when I sold the bonds I put the money into the Central national bank.

"Q. It was money that you had saved up and earned and had been given you from time to time?

"A. Yes, sir.

"Q. About how long were you accumulating this $5,000?

"A. *I do not remember.*

"Q. One, two, or three years?

"A. I suppose two or three years.

* * * * * * *

"Q. So that in two or three years your savings amounted to five thousand dollars?

"A. I do not know what they amounted to at all.

* * * * * * *

"Q. And during the two or three years that you were accumulating this money where were you keeping it?

"A. I was keeping it in different places.

* * * * * * *

"Q. So you do not know how long you were saving it, do you, nor where you were keeping it when you were saving it?

"A. I was keeping it in different places.
"Q. Let us know one place.
"A. One place was in the house *and another place in the savings bank in Philadelphia.*"
Rec., 132.

We have just demonstrated that she drew no money out of the savings bank while she was in Philadelphia, yet we are asked to believe this *fiction* of thousands of dollars being placed there and afterwards drawn out to buy bonds with, but whether a fiction or not can make no difference, for she says that she used this money to buy *notes* with and not real estate, so that she did not use it to pay "Emma Taylor" for any of these properties.

THE FORGERY OF SARAH M'INTIRE'S NAME AND ROBBERY OF HER ESTATE.

But there was another source from which she claims to have derived money wherewith to purchase these properties from "Emma Taylor." Let us look into that.

Her sister, Sarah J. McIntire, she says, died and left her some money. Sally, we are told, was a school-teacher "who lived economically," and she had quite a sum saved up. They had no administration on her estate, but her mother "just divided up the property among the children." "There were *three* living after Sally died," and each of them got "several thousand dollars."

"Q. Did this sister have her money in houses?
"A. No, sir; not in houses; just so much money.
"Q. Did she have a deposit in any bank?
"A. She just had money and then bonds; some bonds.
"Q. Did she have money deposited in bank anywhere?
"A. *No, sir;* I do not think she did; I do not remember that.
"Q. She just kept this money in the house?
"A. *Well, she put her money in the savings fund,* and she had some in the house when she died and then some bonds."
Rec., 140.

If when Sarah J. McIntire died she had money in the savings fund, of course it could not have been drawn out without an administrator being appointed, so we sent to the bank to find out about it. The testimony of Purvis (Rec., 390) shows conclusively that these people will not hesitate to do for gain what we have charged them with doing in these cases, namely, with *personating parties before acknowledging officers and forging deeds.*

The testimony of the Philadelphia health officer and the undertaker (P. 392, 393) proves that Sarah McIntire died on the 10th day of January in the city of Philadelphia. Purvis, the cashier of the savings bank, gives us an itemized statement of Sarah's deposit account (Ex. A. H. No. 61; Rec., 469). From that account it appears that this school-teacher "who lived economically and had a good situation" had succeeded in scraping together in nine years nine hundred dollars, or *a hundred dollars a year.* This with the accumulated interest increased it to $1,196.60 on the 2d day of May, 1881, when it was all drawn out, so that, instead of several thousand dollars apiece, these children were entitled to not quite $400 apiece; but Sarah J. McIntire died January 10, 1881. This money was drawn out, as we have just seen, May 2, 1881, *about four months after her death.* No administrator was appointed of her estate. How was it drawn out? Now, observe the *fraud, forgery, and personation* to which E. A. McIntire will resort for a little money. This bank account was drawn out *upon a power of attorney to Martha McIntire and in E. A. McIntire's handwriting, dated May 2, 1881, and purporting to be signed by Sarah J. McIntire and acknowledged in Washington, 1881, before Christopher Edie, notary public.* (See the photographic exhibit, A. H. No. 62, Pryor case.)

As Sarah J. McIntire had been dead and buried in Philadelphia for four months, who forged her name and personated her before Christopher Edie, of Washington city, if not E. A. McIntire? The Court of Appeals, referring to this

power of attorney, said in its opinion (Rec., —) it was convincing evidence of the capacity of these people to forge and personate.

It is also claimed that she and her sister Emma received a large sum of money from the estate of their sister Addie or Adelaide—some three or four thousand dollars apiece. Addie died in 1885 (Rec., 141), and yet we are asked to believe the money derived from her estate went to pay "Emma Taylor," who, according to McIntire's own statement, disappeared in 1884 (Rec., 213) and whose last conveyance is dated September 5, 1884; but, even should time turn backward in its flight, it would do them no good, for what does Martha say about Addie's estate on cross-examination?

"Q. How much did you get from her estate?
"A. *I do not remember that, either.*"
Rec., 140.

Her counsel then comes to the rescue with a thoroughly leading and suggestive question:

"Q. Did you get as much as three thousand dollars or four thousand dollars from her estate?
"A. *I think I did.* It was divided between my other sister [Emma] and me. She left it to both of us."
Rec., 141.

This would have made Adelaide's estate amount to six or eight thousand dollars, but we show by the petition of E. A. McIntire for administration on Addie's estate (Rec., 516) that it amounted to only $2,700, which would give them only $1,400 apiece, providing none of it stuck to E. A. McIntire's fingers during the administration; but whatever it amounted to is immaterial, for, as we have seen, Adelaide died *long after* the last conveyance of "Emma Taylor" to Martha; consequently no money of hers could have gone into "Emma Taylor's" pockets.

There are still left, however, *three* other sources, for this

woman is almost as fertile in resources as the fabled hydra was of heads, one of which was no sooner chopped off than two sprang in its place. Martha's alleged remaining resources are the safety-deposit boxes, money kept at home, and the Second national bank of this city.

"Q. You had money, then, on deposit in the Second national bank to the credit of your sister. You had money in both the safe-deposit companies and you had money at home, did you?
"A. Yes."
Rec., 172.

Her sister Emma gives the best account of the safe-deposit boxes; let us turn to it:

"Q. Was this safe-deposit box rented jointly by your sister and yourself?
"A. Yes, sir.
"Q. You did not have separate boxes, then?
"A. No, sir.
"Q. Where was this safe-deposit bank that you rented the box in?
"A. Fifteenth and New York avenue and on Pennsylvania avenue.
"Q. You rented first a box in the safe-deposit company at Fifteenth and New York avenue, as I understand, some time in 1885?
"A. *About the 3d or 4th of March*, 1885.
"Q. And subsequently you gave up that box and took another box jointly in the safe-deposit company on Pennsylvania avenue?
"A. Between Ninth and Tenth streets.
"Q. That is the Washington Safe Deposit Company?
"A. I think so.
"Q. Prior to that time she had been depositing her money in the bank with you?
"A. Yes, sir."
Rec., 326.

Two dates here are important to be remembered: First, that the *last* alleged purchase from Emma Taylor by Martha

McIntire was *September* 6, 1884 (the Ackerman and Eller properties); and, second, that Martha did not get her safe-deposit box until *March 3d or 4th*, 1885. Consequently, the money which went to pay Emma Taylor for any of these properties *was never kept in the safe-deposit boxes.* Having shown the fiction of these boxes, let us proceed to the money which she had at home. To dispose of this claim we must summon her sister, Emma T. McIntire, again. She says:

"Mr. HENKLE:

"Q. Mr. McIntire suggests to me to ask you whether she [Martha] had also kept money at home about the house.
"A. Not much.

"Cross-examination:

"Q. What do you mean by 'not much'?
"A. Just enough to pay her immediate debts.
"Q. Thirty or forty dollars?
"A. *Oh, not that much.*"
Rec., 326.

Then a few moments afterwards she explains this answer to mean when Martha was *in Washington* and not when she was in Philadelphia.

"Q. Then, when you made that answer you were limited *to the time since she came to Washington?*
"A. Yes, sir."
Rec., 332.

Martha moved to Washington June 15, 1882. She says she bought from Emma Taylor the Pryor and Southey properties May 31, 1884, and the Brown, Eller, and Ackerman properties September 6, 1884, and as, according to her sister, Emma T. McIntire, she never kept as much as thirty or forty dollars at home "while she was in Washington," consequently that source is excluded.

We have now brought her to the last remaining source; we have followed up all the others and shown the complete

falsity of her pretensions. We have shown that she kept no money at home during the time of these alleged purchases. We have shown that her savings-fund deposit, trivial as it was, did not come into her hands until 1887. We have shown that her share of Sarah McIntire's money from the same savings fund could not have reached $400, notwithstanding the forgery and false personation it took to get it. We have shown that the safe-deposit box and Addie's little legacy were likewise too late to avail her, and we have shown that the money which was drawn from the Central Bank of Philadelphia did not by her own admission go to "Emma Taylor," but to purchase Partello's notes, even if we can be brought to believe that the money was actually hers, since she has told three or four thoroughly irreconcilable stories as to how she got it.

Her last source is, as we have seen, the Second national bank. She testifies, it will be remembered, that she paid "Emma Taylor" $2,500 for the Pryor and Southey properties, on May 31, 1884, giving the money to her brother "in cash."

"Q. Where did you get that twenty-five hundred dollars to pay him?

"A. It was my own money that I had received from time to time as I told you before, as you will remember.

"Q. Where had you been keeping the money before you gave it to your brother?

"A. I had a box in the safe-deposit company for a long time. I kept money in there for some time.

"Q. You kept this money in a box in the safe deposit?

"A. *Yes, sir; that is where I kept the money.*"

P., 126.

Then, afterwards, she says she doesn't know whether she kept it there or not; and pressed again to tell where she got it, she says:

"A. *I cannot remember.* It may be that he had it in bank.

"Q. But you have just said that you paid it to him in cash, did you not?

"A. Well, if he had money in bank for me, of course I could tell him to take it out and pay the cash.

"Q. All your money, then, was kept in his bank, was it?

"A. Yes, sir; as trustee for me."

P., 126.

Now, E. A. McIntire says:

"Q. You kept no bank account for her [Martha] after she came to Washington?

"A. No, sir."

P., 274.

So that her brother did not get it out of any bank for her, and we bring her back again to the one remaining place to get it from, viz., the Second national bank.

"Q. Did she [her sister Emma] have a bank account?

"A. She had a bank account, and I put my money in her bank.

"Q. Did you draw that twenty-five hundred dollars out of her bank?

"A. *I do not remember where I got it from at that particular time.*"

Rec., 127.

Now, Emma T. McIntire is cross-examined:

"Q. Did you keep any account of the moneys that you had in the bank there for your sister?

"A. I kept it in conjunction with mine.

"Q. Did you have any other way of ascertaining except from your memory?

"A. Her memory and my memory.

"Q. You never would keep it in a book or on paper of any sort?

"A. *I trusted my memory.*

"Q. Do you remember the circumstance of her paying for this Pryor property?

"A. I have an indistinct remembrance.

"Q. *Do you remember how much it was she paid?*

"A. *No.*

"Q. Did she ask you to get twenty-five hundred dollars out of the bank for her?

"A. *I do not remember.* I have gotten about that amount for her.

"Q. How long ago?

"A. *I do not know now. I cannot remember.*

"Q. Well, can you remember that about in 1884 she asked you to get twenty-five hundred dollars out of the bank for her—that is, about the date of the sales of the Pryor and Southey properties, when she bought?

"A. *I do not recollect that amount now.* I might have done it, but I do not trust to my memory after it is done."

Now, we struggled hard to get this bank account. We called upon them to produce it and they *refused* point-blank to do it. We then, under a *subpœna duces tecum*, put the cashier, Eckloff, on the stand and was about to have him produce the book for the purpose of showing the account to be almost as trivial as the savings-fund affair, but we were blocked by the defendant's objections (Rec., 341) under the pretence that it was Emma T. McIntire's private account, although she herself has stated it to consist of the joint moneys of herself and sister, and therefore as much Martha's account as hers. The matter was taken to the court on motion and came up before Mr. Justice Bradley, who in an opinion, though thoroughly erroneous as matter of law, held that it was Emma T. McIntire's account and not Martha's, and was therefore *res inter alios acta*. But the important point in his honor's decision was that he held, as contended by defendant's counsel, that neither Martha nor Emma *claimed* that the $2,500 which they assert was paid for the Prior and Southey properties was obtained *from the money in this bank*. We quote:

"Had these witnesses, the defendant Martha McIntire and her sister Emma, both stated that this sum of $2,500 was taken from the bank account for the purpose of being applied to this purchase, it might present a different question" (Rec., 343).

Therefore, having obtained a ruling of the court refusing to allow us to go into this bank account on the express grounds *that it was not claimed that any of the money from that bank was used to pay for these properties*, Martha is now estopped to claim before this court that the money came from that source.

In concluding this inquiry as to Martha McIntire's financial resources, we submit that even should we for the moment concede that "Emma Taylor" is not a fiction, yet the defense has completely failed to show Martha a purchaser for value. Although the burden of proof is on her to show this, we have again assumed the burden and proved a negative; but if it be true that "Emma Taylor" is a fiction, then it matters not, as we have said, whether Martha was the possessor of millions, for she could not have paid money to a fiction.

RECOLLECTIONS (?) OF MARTHA M'INTIRE AS TO HER FINANCIAL RESOURCES, ETC., BEING EXTRACTS FROM HER TESTIMONY AS IT APPEARS IN THE RECORD.

"I moved to Washington on the 15th of June, 1882 (Rec., 115). When I lived in Philadelphia with my family I did not pay any board. I was favored, and that is the way I got a *little* ahead. *I do not remember* how much I had saved by 1882. I certainly saved $1,000 or I would have been a poor woman if I did not. *Cannot remember* whether I saved $1,500 or $2,000 or $2,500. *I could not tell* you if I had to die for it how much money I had when I came from Philadelphia to Washington in 1882. *I do not remember* how much more than $2,000 I had (Rec., 117.)

"*I do not know* how much real estate I had in Washington after I came on here (Rec., 123).

"I know that I did not have a dozen houses. I know that I had one house, but *I cannot tell* what house it was. I would have to look up the papers to tell you. I gave my brother $2,500 in cash to pay for the Southey and Pryor properties (Rec., 125). I had it in a safe-deposit company" (Rec., 126).

[NOTE.—She did not hire the safe-deposit box until March, 1885, and this property was paid for in October, 1884.]

"*I cannot remember* where I got the $2,500. It may be that I had it in bank. *I do not remember* where I got it from, but I know I paid it in cash, in a lump sum and not in driblets. *I cannot remember* whether I paid it to him at his house or at his office. It may be that my sister took it to him. I never bought any property from Emma Taylor before I came to Washington. I think they were all bought afterwards" (Rec., 127).

[NOTE.—The "Barbara Brown and Emma Taylor" deed is dated in 1881, before she came to Washington.]

"*I cannot tell* what I gave Barbara Brown and Emma Taylor for the property. If you will allow me to look at my memorandum, I probably can tell. After I came to Washington I took charge of my deeds. I put them in a safe-deposit company."

[NOTE.—Every one of these properties was bought before she got the safe-deposit box.]

"I gave money to my sister to deposit in the Second national bank for me, where she had her account, nearly a hundred times" (Rec., 129).

[NOTE.—This is the account which she refused to let us see.]

"I never cared about giving her $1,000 at one time to deposit for me. *I do not remember* how many times I gave her $1,000 to deposit. *I cannot remember* whether I gave it to her once or half a dozen times (Rec., 130).

"I had six thousand and odd dollars at one time deposited in the Second national bank in Philadelphia. I got it by selling some bonds—Pennsylvania State bonds. *I do not remember* how many there were. *I do not remember* what they amounted to each. *I do not remember* what I made off of them when I sold them. *I do not remember* whether I made $1,000 or not (Rec., 131).

"*I do not remember* when I bought the bonds. *I do not remember* how long I had them—one, two, or five years. *I could not swear* whether I had them one year or five years or ten years. I think I bought them all at once. *I do not remember* where I had the money on deposit to buy those bonds. If I had it anywhere, I had it in the Savings Fund bank" (Rec., 132).

[NOTE.—She never had but $1,200 in the Savings Fund bank, and that deposit began in 1872, and was not drawn out till 1887, so that she could not possibly have bought them with money she had there.]

"*I do not remember* how long I was in accumulating this $5,000. I suppose it was two or three years (Rec., 133).

"While I was saving it I was keeping it in different places. One place was in the house and another place was in the savings bank.

"I guess there were not any other places. I do not think I kept as much as $1,000 in the house. *I do not remember* where I kept it in the house (Rec., 134).

"When I bought these Southey and Pryor properties from Emma Taylor I bought several houses from her (Rec., 135).

"*I do not remember* what I gave her for these other houses. *I do not remember* whether it was three or four—I think it was four houses—I bought from her afterwards."

[NOTE.—There were only *two*, the Ackerman and Eller properties, which were bought in September, 1884, by the same deed.]

"It was so much for each piece of property, but *I do not remember* how much for each piece. I paid $2,500 for the Southey and Pryor properties, but I do not know how much for the others, *nor do I know* how much I gave for a single piece of them (Rec., 136).

"I have no data, no memoranda, no notes, no old checks, no old bank books, nor anything of that sort which will show that I had any money on deposit anywhere when I had any of these financial transactions. I had some, but they were destroyed.

"I only saw Emma Taylor once. It was in the office of my brother, Edwin A. McIntire. *I do not remember* when it was that I saw her (Rec., 137).

"*I do not remember* whether it was 1, 2, 3, 4, or 5 years ago that I met her; it was several years ago. *I do not remember* actually whether it was *since* we moved to Washington or *before*."

[NOTE.—At the time of testifying she had been living in Washington *ten* years.]

"*I do not remember* whether it was before or after I bought the properties from her. When I was introduced to her I did not think, and I really did not know, whether I bought the property from her or not" (Rec., 138).

THE FORGERIES AS AFFECTING CREDIBILITY.

If the court believes from the evidence that these deeds, or any of them, are forgeries, then all other questions sink into insignificance as compared with that fact. The defendants have offered them as genuine. They have testified in so positive a manner in regard to them that if they are forgeries the McIntires stand convicted of the grossest and most willful and deliberate perjury. Upon what ground, then, can they ask that their uncorroborated testimony upon any disputed matters shall be received and acted upon by the court? Surely, as we have already shown, judicial evidence is not to be mocked at by accepting the statement of such persons. And yet, as there will be found in the record an opinion of Mr. Justice Hagner (whose conclusions the Court of Appeals differed with), we deem it our duty to our client to respectfully criticise that opinion for some of its remarkable propositions in order that they may not stand unchallenged before this court, for that learned judge not only accepted the uncorroborated assertions of the McIntires, but ranked their testimony as on an equality with that of any of the most credible witnesses in the case. "Of course," said he in the

opinion referred to (Rec., 495), "there exists the practice to impeach the witness by contradicting his statements and showing that what he testified was at variance with what other witnesses had said on the same subject, but it remains that what those other witnesses said *is also at variance with what the McIntires have testified.*" That is to say that the McIntires are as credible as the witnesses who contradict them. We are the less surprised at this language, however, when we observe that, so far as the court's opinion discloses, no notice whatever is taken of the innate evidences of forgery in the "Emma Taylor" and Ackerman deeds, or of the self-contradictions of the McIntires themselves, or of the absence of any of that evidence which would be abundant if "Emma Taylor" had been the real purchaser of these properties, such as evidence of her handwriting other than her alleged signatures, evidence of accounts kept with her, evidence of persons who had seen her during the time when she was executing these deeds, evidence of some expert in handwriting to explain away the palpable dissimilarity of these signatures and at the same time their curious likeness in certain features to the signatures of Emma T. McIntire, nor is any notice taken of the suspicious character of the erasures and interlineations and the equally suspicious explanations of them by E. A. McIntire; nor is anything said of the proved fact that the Sarah McIntire power of attorney was signed and acknowledged four months after her death; nor of the Barbara Brown and Emma Taylor joint deed to Martha McIntire, although we have shown from the face of the deed itself that it is a palpable forgery. Not one word of criticism or comment upon these and numerous other self-evident facts utterly inconsistent with the testimony of the McIntires is to be found in either of the two elaborately written opinions of Mr. Justice Hagner who first heard these cases, but instead thereof we are silenced with a brief paragraph that if the witnesses contradict the McIntires the McIntires contradict the witnesses—in other words,

that it is six of one and half a dozen of the other. We submit with all respect that this is not the recognized method of weighing the testimony of witnesses. Something is due to the evidence of our own senses. Merely because a witness says this or that does not establish this or that as a fact if there are other known facts and circumstances incompatible with the existence of the fact alleged. Take, for example, the alleged fact that there was a foreclosure sale of the Brown and Hayne properties, and putting aside for the moment the testimony of the numerous witnesses from the immediate neighborhood (some of whom resided at the time in the property itself) that no such sale took place or could have taken place without their knowing of it or at least hearing of it, and dealing solely with the known fact that the McIntires are unable to produce a single person other than themselves who will swear that they saw the sale take place; that no advertisement of these sales is produced, and that an examination of the daily papers that date shows none; that the auctioneer's sales book shows no such sale; that a forged bill of the auctioneer is attempted to be foisted on the court as genuine; that the person who is alleged to have bought the properties is not produced or anything showing that she had dealings with the trustee, except her alleged signatures to deeds which competent experts pronounce forgeries and which themselves are so dissimilar as to arouse suspicion and suggest fraud; that no checks, receipts, or accounts of any sort are produced to substantiate the naked assertion that extensive dealings were had with her by the trustee; that the deeds alleged to have been executed by her were kept off the record for years; that the alleged purchaser from this mythical personage is the trustee's own sister; that the sister is unable to produce the slightest written data showing a payment for the properties; that she completely fails to satisfactorily explain where she got the money to pay for them; that the production of the most important of her alleged book accounts

is refused; that both the direct and cross examination of herself and brother have evolved numerous contradictions and inconsistencies in regard to the facts as alleged by them—all these matters, to say nothing of others which time does not permit us to enumerate, form a chain of circumstances utterly incompatible with the existence of these alleged foreclosure sales. If, then, no such sales occurred, what is to be said of these McIntires, who testify that they did occur? Is it to outweigh or even balance the testimony of the numerous witnesses to the fact that they did not occur? Is it to outweigh the testimony and the innate evidence going to show that the "Emma Taylor" deeds are forged? Surely not if the accepted rules of evidence are to be enforced.

THE BURDEN OF PROOF.

It is well settled that when a party claims the property of another under a deed of conveyance and it is charged that the party so claiming obtained it fraudulently and without the payment of any consideration therefor he must, when the circumstances are such as to throw suspicion upon the transaction, show *clearly* and satisfactorily how he bought and paid for the property, where the purchase-money came from, etc.

Clements *vs.* Moore, 6 Wall., 299, at p. 315.
Piddock *vs.* Brown, 3 Peere Williams, 289.
Wharton *vs.* May, 5 Vesey, 49.

Surrounded, therefore, as these transactions are with suspicious circumstances piled "Pelion upon Ossa," the burden is thrown upon Martha McIntire to clearly and satisfactorily show how and where she got the money to pay for these properties and how and where and when she paid for them. This, we have seen, she has not done. She cannot, therefore, claim as a purchaser for value.

HOW IS A WITNESS' CREDIT TO BE IMPEACHED?

The criticism of Mr. Justice Hagner upon our method of impeaching the credit of the McIntires and as to what would have been the proper method is, we submit, utterly untenable. We quote the language of his honor as found on page 495 of the Record:

"With respect to the attempt to impeach their [the McIntires'] testimony, it is observable that no witness is brought from the large population of this District to testify that either is unworthy of belief, *and that they would not credit them on their oath*, although this is the *most usual* and, perhaps, *fairest* way of impeaching a witness."

Mr. Greenleaf in his work on evidence (vol. 1, sec. 461) lays down the modes as well as the order in which a witness may be impeached:

1st. Exhibiting the improbabilities of his story by a cross-examination.

2d. By disproving the facts stated by him by the testimony of other witnesses.

3d. By general evidence affecting his credit for veracity.

Mr. Justice Hagner intimates, as will be seen from his quoted language, that this *last* method given by Mr. Greenleaf should really be the first. He also says it is the *most usual* and the *fairest*. With all due respect, we submit it is the most unusual and the unfairest. Probably in not one civil case in a hundred where the veracity of a witness is impeached is the method which Mr. Justice Hagner here suggests resorted to. Indeed, it may be said to be very unusual to do so at all except in criminal cases, where a man's life or liberty is at stake. Moreover, Mr. Greenleaf, referring to this method of having other witnesses testify "that they would not credit the witness on his oath," says in the same section above cited, "Its propriety has of late been questioned, and perhaps the weight of authority is now *against*

permitting the witness to testify as to his own opinion;" so that we resorted to the way most approved of by Mr. Greenleaf, viz., showing the improbability of the story by cross-examination and by contradicting the McIntires by other witnesses, and yet we are criticised by his honor for not adopting a method disapproved of, as Mr. Greenleaf says, "by the weight of authority."

KNOWLEDGE OF THE AGENT IS KNOWLEDGE OF THE PRINCIPAL.

Martha McIntire cannot claim as a purchaser without notice of her brother's fraud, for she and he both repeatedly testify that he was her agent in all these transactions, and it is well settled that the knowledge of the agent is the knowledge of the principal.

"A principal in a transaction is chargeable with notice of matters affecting its validity coming to the knowledge of his agent pending the proceedings."

Johnson *vs.* Laflin, 103 U. S., 800.

And the rule that notice to the agent is notice to the principal applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in an *antecedent* transaction, and present to his mind at the time he is acting as such agent.

Harrington *vs.* United States, 11 Wall., 356; and see to same effect Aston *vs.* Wells, 4 Wheat., 466.

Pomeroy, in his Equity Jurisprudence, says on this subject:

"The general rule is fully established that notice to an agent in the business or employment which he is carrying on for his principal is a constructive notice to the principal himself, so far as the latter's rights and liabilities are involved in or affected by the transaction" (Pomeroy Eq. Jur., sec. 666).

"Whenever the knowledge of the agent is actual—that is, whenever he has obtained the actual information of certain facts, and has therefore received actual notice—his imputation of knowledge to the principal is evident and reasonable. Whenever the agent's knowledge of certain facts exists only in contemplation of law—that is, when he has received a constructive notice—the imputation thereof to the principal is no less reasonable and clear. If under any circumstances a party, while dealing for himself, must be trusted in contemplation of law as one who has acquired certain information, and must be charged with constructive notice thereby, the same result must follow when under like circumstances the party is dealing by means of an agent" (Pom. Eq. Jur., sec. 676).

Therefore had Martha even paid the money over to her agent, E. A. McIntire, for these properties she could not hold them as against the complainants when it is shown that E. A. McIntire obtained them fraudulently—that is to say, E. A. McIntire and Martha McIntire are, for the purposes of administering the law of these cases, *one* person, and that person is E. A. McIntire. If we show that *he* has defrauded us, then Martha McIntire has also, although (were it possible to conceive it in view of the testimony) she herself had been actually deceived and defrauded by him.

REPLY TO APPELLEE'S OBJECTION TO THE COMPARISON OF ADMITTED SIGNATURES TO CERTAIN PAPERS FROM THE ORPHANS' COURT WITH THE ALLEGED FORGED SIGNATURES.

The originals of the papers above referred to are before this court. The signatures are *admitted* to be genuine (Rec., 323; also by E. A. McIntire at p. 287). Nevertheless the learned counsel for the appellee objects to any comparison being made of them with the alleged forged signatures because, as he claims, they are not properly in evidence for any purpose.

In this the learned counsel is clearly mistaken, as the

record will show. Thus the signature of Emma T. McIntire is found affixed to the Medford & Waldron contract (Ex. A. H. No. 18, Rec., 441). The signature was compared by Mr. Hay, the expert, with the "Emma Taylor" signatures, and the opinion given that it was written by the same person (Rec., 785). The paper was offered in evidence *by the defendants themselves,* for the express purpose of proving the contract.

So the signature of Emma T. McIntire to the petition filed in the orphans' court August 5, 1885, and printed on pages 522, 523 of the Record, is properly in evidence for the purpose of contradicting Emma T. McIntire, who had testified to having a considerable bank account about that time made up of moneys, deposits by herself and sister Martha. This petition shows that at that very time they were representing to the orphans' court that they were "much in need" of money. Emma T. McIntire was handed this petition and asked if she signed it, which she admitted (Rec., 322). So the petition (Rec., 521) filed in the orphans' court March 5, 1886, is properly in evidence to show the date of the death of David McIntire; and the petition (Rec., 516, 517) filed in the orphans' court November 20, 1885, and December 11, 1885, respectively, are relevant to show the date of the death of Adaline McIntire, from whose estate Martha claims to have received a large sum of money, which she says she used in purchasing the properties in controversy. The petition shows that Adaline died July 21, 1885, *long after* these properties were bought, and therefore that whatever moneys were derived by Martha McIntire from her sister Adaline's estate could not possibly have gone into these properties. Moreover, it directly contradicts the statement of the McIntires that she left an estate of large proportions. The sworn statement of E. A. McIntire to the petition puts her estate at but $2,700, while her distributees were *seven* persons, yet Martha and her brother claim that, as one of these seven distributees, she received between three and four thousand

dollars! (See *ante* this brief, p. 55.) Certainly this paper under the defendant's own signature is competent to contradict this testimony and to impeach their credibility.

Again, as to the so-called "card" signatures. These, it will be remembered, are certain signatures which E. A. McIntire testifies were "prepared" (Rec., 219) to deceive and "entrap" the witness Mrs. Annie Galliher, who had testified that she knew Emma T. McIntire's signature. For the purpose of breaking down her testimony she was shown these cards which both he and Emma McIntire swear were not written by the latter, and she was asked if they were the signatures of Emma T. McIntire, to which Mrs. Galliher replied they were, thus, the defendants contend, showing that she did not know Emma T. McIntire's signature when she saw it. The extent and accuracy of Mrs. Galliher's knowledge of Emma T. McIntire's signature is an important issue in these cases, for she testifies (Rec., 66) that the "Emma Taylor" signature to the Forrest deed is in the handwriting of Emma T. McIntire. If, therefore, the defendants testify *truthfully* that these card signatures were not written by Emma T. McIntire, then Mrs. Galliher's qualification as a judge of the latter's handwriting has been successfully attacked; on the other hand, if they have testified untruthfully about it, and Emma T. McIntire *did* write them, then the whole case of the defence is broken down, for they must stand convicted of the grossest perjury in a matter about which they could not be mistaken. Now, the experts McLellan (Rec., 87) and Hay (Rec., 783) both swear that, comparing these card signatures with the signature to the Medford contract (offered in evidence by the defendants themselves), as well as with the admitted signatures from the orphans' court, they are of the opinion that these card signatures were written by Emma T. McIntire, and we apprehend this court will be of the same opinion after making a similar comparison. So that these card signatures are made relevant testimony in the case by the testi-

mony of E. A. McIntire, who uses them as a means in his attempt to break down Mrs. Galliher's testimony.

Moreover, it is to be remembered that they are admitted to *resemble* Emma T. McIntire's signature (Rec., 287); so that these card signatures, and unquestionably the signature to the Medford & Waldron contract and those to the orphans' court papers which we have pointed out, are completely within the ruling of this court that papers containing signatures must be relevant and admissible for some other purpose than the mere proof of handwriting.

It has already been observed that these signatures, except the card signatures, are admitted to be genuine. This court has never passed upon the question whether a signature admitted to be genuine can be used for comparison with disputed signatures, although the paper containing the signature may not itself be relevant evidence for other purposes, and it is respectfully submitted that whenever such a case is presented this court will not decide that an admittedly genuine signature cannot be compared with a disputed one for the purpose of determining the genuineness of the latter.

But, after all, the cases of these complainants, as has already been said, does not rest upon the fact whether or not Emma T. McIntire wrote the "Emma Taylor" signatures. The question is, are the "Emma Taylor" signatures genuine, not *who* forged them. The complainants believe that Emma T. McIntire wrote them; but even if they are mistaken as to that, it does not follow that they are not forged. Strike out all the Emma T. McIntire signatures in the case, and the innate evidence of the "Emma Taylor" signatures themselves shows them to be forged, to say nothing of the mass of testimony going to show that she is a mere fiction.

II.

THE PHOTOGRAPHS.

The photographic exhibits are also attacked as inadmissible. It is said that they are but *copies*. It is to be observed that this is not a case where the photographic copy is the *only* evidence of the handwriting. The *originals* are also produced. The purpose of the photographs is simply to *aid the court* in its examination of the originals, just as the magnifying glass may unquestionably be used. The court can call to its aid every *natural* agency for the purpose of comparing these originals with each other, and photography is nothing more than the application of the powers of nature to the reproduction of originals.

The use of enlarged photographic copies of handwriting already in evidence is well explained in Maury *v.* Barnes (16 Gray, 160), where the court said :

"They (the photographic copies) were capable of affording some aid in comparing and examining the different specimens of handwriting which were exhibited on trial. *It is not dissimilar to the examination with a magnifying glass.* Proportions are so enlarged thereby to the vision that faint lines and marks as well as the genuine characteristics of handwriting, which perhaps could not otherwise be clearly discerned and appreciated, are thus disclosed to observation, and afford additional and useful means of making comparisons between admitted signatures and one which is alleged to be only an imitation."

In Luca *v.* United States (23 How., 515), decided in 1860, this court resorted to the use of photographic copies for the purpose of comparison of handwriting, and a grant of land in California purporting to have been made to one José de la Rosa and purporting to be signed by Pio Piso, as acting governor, and countersigned by his secretary, was on the

faith of these photographs adjudged to be false and forged. The court, by Mr. Justice Grier, said:

"Many excellent judges have carefully scrutinized and compared these signatures, and declare the signatures in question are forgeries. Two of them express the opinion that the person who wrote the instruments made the signatures also."

"*We have ourselves been able to compare these signatures by means of photographic copies, and fully concur (from evidence 'oculis subjecta fidelibus') that the seal and the signatures of Piso on this instrument are forgeries.*"

STATEMENT OF THE SPECIAL FACTS IN MARY PRYOR'S CASE AND ARGUMENT THEREON.

If, by the foregoing, we have established the charge that "Emma Taylor" is a fiction, and that the McIntires are unworthy of belief, we have lightened considerably the task before us, to wit, that of showing that the decree of the Court of Appeals in the Pryor case should be affirmed.

What is Mary Pryor's case?

The material averments of the amended bill are that the complainant, being the owner of parts of lots 21 and 22, in square 569, of this city, executed on the 2d of May, 1880, a deed of trust thereon to E. A. McIntire to secure Hartwell Jenison $450, said indebtedness being represented by the joint and several promissory note of the complainant and her husband, Thomas Pryor (the deed of trust is made part of the bill and shows the note to have been payable in one year from the date of the trust); that during the latter part of the month of May, 1881, the note being overdue and unpaid, said McIntire represented to the complainant and her husband, both of them being unlettered colored persons and ignorant of business and legal matters, that he was compelled to sell the property under the deed of trust, but that it was not his intention to disturb the complainant in her ownership thereof; that the sale would be

a mere matter of form, and suggested to complainant's husband that he should buy the property at the same, and time would be allowed him to pay said indebtedness; that accordingly, on the 17th of June, 1881, the property was exposed to public sale at auction, and complainant's husband, as complainant and her husband *supposed*, became the purchaser thereof for the sum of $700; that after said sale said McIntire did not for some time disturb complainant and her husband in their possession of said property, but represented to them that they might pay him rent therefor and he would apply it upon the indebtedness due, and that complainant's husband did accordingly pay him rent at the rate of six dollars a month, with the understanding, however, that said sum should be applied to the liquidation of the $450 note, and when the sum was paid the property would be reconveyed to the complainant.

"That complainant has only recently discovered that said sale was made by the said trustee, McIntire, *really in his own interest and with the intent to obtain for himself by fraudulent representations to complainant, her late husband, and the said Jenison the title to the said property;* that in pursuance of said fraudulent intent the said McIntire, on the day after said sale, to wit, on the 28th day of June, 1881, executed as trustee a deed of said real estate to said Jenison for a pretended consideration of $806, but kept the same from record, unknown to the said Jenison, for a period of nearly ten months."

That on or about the day after executing said deed to Jenison said McIntire pretended to him that in order to pay the taxes in arrear and expenses of sale the sum of $425 would be required, and accordingly procured the authority of Jenison to borrow that sum upon his (Jenison's) promissory note secured by deed of trust upon said property; that thereupon, at McIntire's instance, Jenison executed his promissory note for $425, payable in one year, *to one Emma Taylor* and joined with his wife in securing the same by a

deed of trust to said McIntire upon said property; that thereafter—that is to say, on or about the 19th day of April, 1882—the said McIntire, pretending to said Jenison that a purchaser for said property for more than the incumbrance upon it due to said Emma Taylor could not be found, induced the said Jenison to execute a deed in fee of said property *to said Emma Taylor* for the amount of the incumbrance thereon, to wit, $425.

That about six years afterwards said McIntire induced said Jenison, by representing that the same was necessary, to execute a deed of quitclaim *to said Emma Taylor* of said property, dated September 27, 1887; that the only purport of said quitclaim was to pass to said Taylor the right to any drawbacks upon special taxes theretofore assessed upon said property, but complainant is informed and believes, and so avers, that the true purport of said deed was not explained to said Jenison, and that he executed the same only because it was asked of him by said McIntire.

That complainant is informed and believes that said Emma Taylor was and is an altogether fictitious person, created by said McIntire for the purpose of carrying out his fraudulent scheme of obtaining possession of said property for himself; that the said $425 note and the deed of trust to secure the same were all fictions manufactured by said McIntire to the same end; that the money used by said McIntire to pay said taxes and expenses was much less than $425 and was paid out of his own funds; that the deed in fee of said property to Emma Taylor was but a cloak to cover up the fraud of said McIntire in obtaining complainant's property, and the said quitclaim was for the same purpose, and complainant is advised by counsel, and so avers, that the said Emma Taylor being a fictitious person, the deeds executed to her and in her name were void, and that no title passed thereby. That all of the foregoing facts have only been discovered by the complainant within the last few months.

That thereafter, on the 31st day of May, 1884, said Mc-

Intire "executed or caused to be executed a deed in the name of the aforesaid fictitious person, Emma Taylor, to his sister, Martha McIntire;" *that said Martha paid no consideration therefor, "and that the said conveyance was made to her in pursuance of the fraudulent design of the said trustee, McIntire, to further cover up the fraud by him perpetrated on complainant and with the view that the benefits of the said property should inure to him as the real, though not apparent, owner of said property;"* that said Martha had notice, actual or constructive, of said fraudulent acts of said McIntire; that said McIntire during all the period since said sale has appropriated to himself the rents and profits of said property; "*that the said [foreclosure] sale having been made in pursuance of a fraudulent scheme to obtain said property for himself, the same is wholly void and should be so declared by a court of equity.*" The bill then prays that the defendants be required to answer the bill, *and that the said pretended foreclosure sale be set aside* and the deed of said trustee, McIntire, to Hartwell Jenison, and of Jenison to Emma Taylor, and of Emma Taylor to Martha McIntire be declared null and void; that an account be taken of what is due upon said note of $450, and upon the payment thereof to the lawful holder thereof the trust be declared released and satisfied; that said McIntires account to complainant for rents and profits, and for general relief.

To this bill the defendants Edwin A. and Martha McIntire answer jointly denying all fraud and setting up that Martha McIntire is a *bona fide* purchaser for value from said Emma Taylor, *whom she has seen a number of times and knows not to be a fiction.* The defendant E. A. McIntire denies that he ever represented to the complainant or her husband or either of them that they might pay rent, and that the rent might be applied to the indebtedness or to the liquidation of the note; that there was never any understanding about a reconveyance to the complainant; that, "on the contrary, when the note was overdue and unpaid,

to wit, on or about the 2d day of May, 1881, the husband of the complainant advised defendant E. A. McIntire that he (Thomas Pryor) and his wife could never pay the note, but that they would like to deed their property to some one who would relieve him of this matter and allow him to remain on the lot for a while longer to carry on the coal and wood business." Accordingly, on the 3d day of May, 1881, the complainant and her husband joined in a deed in fee of said property to the defendant Martha McIntire, subject to the deed of trust of May 2, 1880; that on the day following said Thomas Pryor executed a written agreement to rent said lot from said Martha; that subsequently said Martha, learning that there was a very large sum due for taxes instead of the small amount represented by complainant, "thought it best to allow the property to be sold under the deed of trust.' The answer then goes on to recite that, the note being overdue, said McIntire was authorized in writing by Jenison to foreclose the trust, which he accordingly did on the 28th of June, 1881, and "struck off" the same to said Jenison for $806; that a deed was made to said Jenison, but he declined to advance any money to pay the expenses of sale and special taxes; that in consequence he negotiated a loan for Jenison for $425, and a deed of trust to secure the same was executed by said Jenison and wife, dated June 29, 1881; that, at the instance of said Jenison, he (McIntire) endeavored to find a purchaser at private sale for the lot and for nearly a year had it advertised and placarded; that "on the 19th of April, 1882, said Jenison, declining to pay the note or the interest and fearing to risk a sale, lest the property should not sell for sufficient to pay the encumbrance and he would be held for the deficit, decided it was best for him to convey his equity in the property to the payee [Emma Taylor] of his note secured by said deed of trust of June 29, 1881, in consideration of the surrender and cancellation of said note, and about a month thereafter said payee [Emma Taylor] conveyed to the defendant Martha McIntire, who

had previously (as above recited) received a deed in fee of the same property from the complainant and the husband of the complainant."

That "some time after the above-recited conveyance was made to defendant Martha McIntire a quitclaim deed was made from said Jenison and wife to defendant Martha McIntire (and not to Emma Taylor, as alleged in the bill);" that the consideration of $100 mentioned in said deed was paid to said Jenison, "who very gladly accepted it." Said quitclaim "*was executed to cover and cure a defect in the deed from Jenison to Taylor*, and also to enable Martha McIntire to procure any rebate or drawbacks that might be given by the District authorities on account of the large bill paid for special taxes."

That defendant Martha McIntire is at present the owner of the lot; that about three years ago she erected four brick houses thereon, two on the F Street and two on the alley front; that said Mary Pryor never objected or gave notice of any claim whatever, "nor did either of these defendants know that she ever thought she had any claim thereto until the filing of this bill."

The defendant Jenison answered separately denying all knowledge of what occurred at the foreclosure sale or of what arrangements or agreements had been made by said McIntire, trustee, with complainant or her husband. He admits executing the deed to Emma Taylor, but says that he does not know whether she is a fictitious person or not. He never saw her or had any correspondence with her, but supposed at the time of executing the deed to her that she was a person in existence, but said supposition was based wholly upon his confidence in McIntire and the belief that he would not impose upon him or require him to execute a deed to a fictitious person; that if any fraud was perpetrated in the [foreclosure] sale of said property, it was wholly without his knowledge; that he has received but $100 from said McIntire on account of said property. He

"*offers no objection to the vacation of the deed by said McIntire to him or of the other deeds mentioned in the bill. He has no desire to take any advantage whatever of the complainant, and is perfectly willing to have the sale vacated and his trust reinstated upon the property, with leave to the complainant to pay whatever may be due of the indebtedness secured by said deed of trust.*"

Proofs were taken and, the case coming on for final hearing before the Court of Appeals, a decree was passed granting the prayers of the bill, from which decree the defendants have appealed to this court.

ARGUMENT.

The evidence develops the following facts: On the 2d of May, 1880, Mary C. Pryor, an uneducated colored woman, who made her living by taking in washing (Rec., 26), was the owner by inheritance in her own right of parts of lots 21 and 22, in square 569, of the city of Washington. The property is situated about the middle of the block on the south side of F street northwest between First and Second streets, contained 2,400 square feet, and was worth at that time from seventy-five cents to a dollar a square foot—that is to say, from $1,800 to $2,400, according to the opinions of expert witnesses.* It was then occupied by her husband, Thomas Pryor, as a wood and coal yard in a small way. Pryor himself was also an uneducated colored man, who, until he started this coal yard on his wife's property, had made his living by whitewashing, sawing wood, and doing odd jobs (Rec., 22 and 86). He died about two years before the bringing of this suit. Four years previous to the date just mentioned, viz., May 2, 1876, his wife and himself had placed a deed of trust (Ex. A. H. No. 2; Rec., 425) upon

*See uncontradicted testimony of Hellen, Cusick, Levy, Bennett, and Duncanson, Rec., pp. 372 to 387.

this property to secure their joint note of $500, made to the order of Geo. E. Emmons and payable in two years with interest at 10 per cent. The loan had been made through the agency of B. H. Warner & Co., real-estate agents of this city. This note had been purchased as an investment (Rec., 36) by he defendant Hartwell Jenison, then and now chief of the loan division of the Treasury Department (Rec., 187). The trustees in the trust were B. H. Warner and Henry McIntire.

On the 2d of May, 1878, this note becoming due, there was indorsed upon it as follows: "Paid $25.00 and also $50.00 on ac. of principal" (Ex. A. H. No. 27; Rec., 450). Whether the note was thereupon extended does not appear. At all events, indulgence was given for two years more.

On the date first mentioned, viz., May 2, 1880, Thomas Pryor called upon the defendant E. A. McIntire, who, though a lawyer, never practiced as such, and was then and at the date of filing the bill following a real-estate and loan-brokerage business. The purpose of Pryor's visit to him was to arrange for borrowing $450 on his wife's property in order to pay off the Jenison note (Rec., 239). Instead of lending him the money, McIntire saw Jenison and got him to extend the loan one year; but, as he says (Rec., 240), since it was "very natural" that he should want "to be trustee, get the commissions, and make a charge for drawing the papers, etc.," he, instead of merely making an extension of the old note, drew up a new deed of trust in which he substituted himself as *sole* trustee in place of B. H. Warner and Henry McIntire. The new note was for $400, dated May 2, 1880, and made payable in one year to the order of Hartwell Jenison. The trust bore the same date, but was acknowledged May 27, 1880. From the date of this transaction McIntire became the trusted agent of both parties—of the Pryors because of their ignorance of business matters, and of Jenison because, being "engrossed in the duties of his office" (Rec., 397), he preferred that this matter should be attended to by an agent.

From the beginning to the end he never saw the Pryors or their property. McIntire collected the interest on the note (Rec., 311). Both the Pryors and Jenison had the most implicit confidence in McIntire's integrity. We shall in the course of this brief see how, as a natural consequence, they paid the forfeit of their misplaced confidence, *for in a little over a year and a half* the trusted agent had juggled both of his principals out of everything in sight—Mrs. Pryor out of her property and Jenison out of his money!

It will be observed that, as in all these cases, McIntire's first step was to make himself sole trustee in the trust securing the loan. The new note was for one year. There can be no doubt that such an experienced money-lender as McIntire is shown to have been by the evidence in these cases saw at once that with the maturity of this note at the end of the year the Pryors would be no better off than they were when they first called upon him for assistance in their financial distress. To have them entirely in his power by their inability to pay when the year expired was, no doubt, his principal motive in making himself the *sole* trustee in the deed, for, as the court will see, it would have been impossible for the frauds in these several cases to have been perpetrated had McIntire joined with himself in these trust deeds an honest cotrustee. Accordingly in just *one year* afterwards, viz., May 3, 1881, which was the very *next day* after the note fell due, we find him claiming to have obtained a deed in fee of this property from the Pryors to his sister, Martha McIntire, for the sum of *five dollars!*

This deed from the Pryors to Martha McIntire (Ex. A. H. No. 3; Rec., 425) stands as one of the monuments of fraud in this case. Mrs. Pryor testifies (Rec., 344) that she never saw Martha McIntire in her life, and that she never (Rec., 349) made a deed in fee of her property to her or to anybody. The paper itself is so erased and spoliated, both in the body of the instrument and the acknowledgment, as to completely refute any claim that it is an *honest* deed. We ask

the court to carefully inspect the original. It will be found that the name of the alleged grantee, Martha, is written over a neat erasure hardly perceptible until held up against the light. E. A. McIntire gives an incredible explanation of this erasure. He says (Rec., 187, 235, and 243) that Thomas Pryor came to him shortly before his $450 note was due and proposed to him to convey the property to anybody for a nominal sum if the grantee would execute to him a lease of the property for a year at a small rent; that at that time he, McIntire, supposed the only lien upon the property was the $460 note with about $20 interest. He supposed the taxes were paid. Accordingly he says he went to his uncle David McIntire, who was at that time looking out for bargains in real estate, and offered it to him; that David agreed to take it, and he, E. A. McIntire, made out a deed to him of the property; but before it was executed David, for some reason which McIntire says he has forgotten, refused to take it—that is to say, although David McIntire was a man of means and was looking out for bargains in real estate, he would not give five dollars for a piece of property worth from $1,800 to $2,400 and subject only to liens of about $475. We submit that in asking us to believe this, to say nothing of the claim that Mrs. Pryor was willing to sell an equity of at least $2,000 for five dollars, is putting too great a tax upon human credulity; but he tells us that as David refused to take the property he wrote to his sister Martha, who was then living in Philadelphia, and offered it to her, and that she agreed to take it. She, however, authorized (Rec., 235) no agreement for a lease to be made with Pryor (although, according to his statement, that was the very condition upon which Pryor wanted to sell) until *after* the deed was made to her, when she "turned around and leased it to him for a year." As the lease was made the very next day and as Martha was at that time in Philadelphia, the arrangement (?) must have been made by telegraph. McIntire says he sent the deed to his sister in Philadelphia

without recording it, and that it was never recorded because shortly afterwards, it being discovered that there were about $250 of special taxes on the property, she "gave up" the purchase (Rec., 155), and yet on May 31, 1884, she is shown on her own figures to have paid "Emma Taylor" for this same property $1,425, and McIntire called it "a bargain" at this price (Rec., 193).* But, as we have said, the defendant Martha claims now nothing under this deed (Rec., 236), even were it in its spoliated and unsatisfactorily-explained state admissible in evidence. It was, as we have seen, never recorded and is practically out of the case, except as it stands to indicate the methods of the McIntires and the credibility of their testimony. McIntire's testimony in regard to this transaction will be found at pages 187, 196, 235, and 245 and Martha's at pages 105, 135 of the Record.

Exactly how McIntire got this deed from the Pryors will probably never be known. It is more than likely, however, that it was obtained just as many another such deed has been fraudulently obtained under one pretense or another from unlettered and unsophisticated persons. Knowing McIntire as we have learned to know him by the knowledge of the marvelous number of forged deeds, spoliated papers, and fraudulent transactions evidenced in these cases, we have not the shadow of a doubt that the erased name in the deed was *Edwin A.*, but subsequently, reflecting that his position as trustee was inconsistent with such a conveyance, the words "Edwin A." were neatly erased and the word "Martha" written over it; and that this was done *after* the deed was executed is evident not only from the neatness of the alterations, but especially because the note of the correction written below Helmick's signature as a witness is shown by the expert (Rec., 93) to have one of its lines

* That is to say, she paid her $2,500 "in lump" for the Pryor property and the Southey property. The Southey property, McIntire says, was not worth more than $1,175 (Rec., 876). Deduct therefore $1,175 from $2,500 and we have $1,425 as the value of the Pryor property.

written over the signature, which could not have been done unless it had been *first* witnessed. The deed is plainly the evidence of an abandoned attempt on the part of McIntire to get in this mode the record title to the property, and the reason for his abandonment of it is not hard to find. Soon after the deed was made he naturally desired to know what taxes were due on the property. That examination disclosed the existence of a large unpaid special tax of $226 (Rec., 188). To take the title under this deed would have required not only the payment of that tax, but the assumption of Jenison's trust of $450, whereas by getting a deed to the property *for nothing* from Jenison, as we shall see he subsequently did, the payment of this $450 would be saved. Thus it was that McIntire within a very few days after the making of this deed of May 3, 1881, abandoned the idea of claiming under it and set out to bring about a foreclosure sale. The technical default existed to apparently justify the foreclosure, and therefore, though the property was well worth three times the amount of the liens upon it, this pretended friend of the Pryors, who almost slops over as he tells us of his tender feelings for them, *indites in his own handwriting a direction to himself to foreclose the trust.* The next step was to secure Jenison's signature to this paper. To do so he had only to alarm Jenison. The latter says McIntire told him that Pryor had "refused to make any further payments on the note, and that there were taxes also against the property which, together with the incidental expenses [of a foreclosure sale], would about equal the face of the note" (Rec., 37). Of course on this statement Jenison signed the order to foreclose which McIntire had written out for him to sign. He had placed, as he tells us, the whole matter in McIntire's hands, and a mere *suggestion* from him was enough. The order was written on the deed and was dated May 25, 1881, about three weeks after the alleged deed to Martha, and reads as follows:

"Failure having been made to pay the note secured by the within deed of trust, the trustee is hereby authorized to advertise and sell the property at public auction. Washington, D. C., May 21, 1881" (Rec., 43).

So completely had Jenison given the management of the whole matter to McIntire, and such "entire confidence," to use his own words, did he have in him (Rec., 40) that he says he gave so little thought to the signing of this paper that the fact of doing so had completely passed out of his mind, and but for the fact of seeing his signature affixed to this writing he could not swear he had ever given an order to foreclose the trust, and indeed, until his attention was called to his signature, he did actually declare to complainant's counsel that he had not done so, as is shown by the recitations of the original bill. In pursuance of this order the property was advertised in the daily *Critic* (Rec., 7), a small one-cent afternoon paper of little circulation (now defunct) and having then a struggling existence.

The first intimation which the Pryors received that any sale of their property was intended was the seeing of the flag before their property on the morning of the day of sale, June 17. Mrs. Pryor says:

"We first saw the flag out in front of the property, which we occupied then as a coal yard, on F street, in the morning between nine and ten o'clock. *We did not know what it meant*, and then my husband went down alone to see Mr. McIntire, but he did not see him. Then Mr. McIntire came down there that day, and my husband asked him about the flag being out there, and Mr. McIntire said that the trustee (*sic*) was pushing him and he was compelled to put the flag up and have a sale, but that he would allow my husband to bid it in and would knock it down to him" (Rec., 22).

Thomas Pryor was to pay for it with his notes, but afterwards McIntire told him he must pay rent, which he would allow to go upon the purchase price.

Of course, counsel for complainant do not for a moment

contend that it was ever McIntire's intention to carry out such an arrangement with Pryor; nor do they contend that Mrs. Pryor, unsophisticated and unlettered as she is, is able to give the exact terms of the arrangement by which her equally unlettered husband—a whitewasher and wood-sawyer—was quieted by McIntire and brought to submit to a foreclosure sale of his wife's property. What we do say, however, is that if human testimony is worth anything Pryor did bid at the sale *and the property was knocked down to him.* This is proved by the testimony of *five* witnesses, contradicted only by McIntire himself. The witnesses Johnson and Holliday were at the sale. They knew Pryor well, and, though they were separated in giving their testimony (Rec., 31) and did not know what the other had testified to, they both swore that the property was knocked down to Pryor.

Thus, Johnson says (Rec., 32):

"Q. Do you remember who the property was knocked down to?

"A. It was knocked down to Pryor."

And Holliday, at page 34:

"Q. You heard the auction sale going on?

"A. Yes, sir.

"Q. Do you remember to whom the property was knocked down?

"A. Well, it was struck off to Pryor. I was standing right at the gate."

Ragan, another witness and an owner of property in the neighborhood, says he was present, and, although he frankly admits that his recollection is faint in regard to the occurrence, he says that recollection is that the property was knocked down to Pryor. It was sought to impeach this testimony of Ragan's because of his confessed vagueness of memory as to the sale. But fortunately another witness supports his recollection and gives the most indubitable

proof that Ragan's memory is not at fault. This witness (Jacobs), who lives in the neighborhood, says that he got to the *locus* of the sale just as it was over, and that he met Ragan coming away from the crowd and asked him who bought the property, and Ragan said "Pryor had bought it in" (Rec., 31). This corroborating testimony of Jacobs is clearly admissible in view of the defendant's attempt to discredit Ragan's testimony.

In Baber *vs.* Broadway & S. A. R. Co., 29 New York Suppl., at page 43, the court, speaking of declarations made by a witness out of court in corroboration of testimony given by him on the trial, say they are generally inadmissible, but that there are exceptions to the rule, and go on to say:

"In order to come within the above exception to the rule, it is not necessary, as contended by appellant's counsel, that there be a direct charge of fabrication. It is sufficient if the impeaching evidence tends to show that the account of the transaction given by the witness is a recent fabrication or was prompted by corrupt motives (*In re* Herdra's will, 119 N. Y., 618; Herrick *vs.* Smith, 13 Hun., 446) *or where the object of the cross-examination is to show that the testimony of the witness is an afterthought* and a subsequent invention (Gilbert *vs.* Sage, 57 N. Y., 639, 640; Wray *vs.* Fedderke, 43 N. Y. Super. Ct. Rep., 335, 340; Com. *vs.* Wilson, 1 Gray, 337, 340). In the case before us it is apparent, from a careful reading of the proceedings and evidence, that the object of the question put on the cross-examination of the hospital surgeon with respect to any statement made by George L. Baber (the witness above referred to) when he was brought to the hospital, *the cross-examination of the boy, and the defendant's direct examination of its witness, all had a tendency and were calculated to impeach the boy's testimony and to stamp it as an afterthought and a fabrication of recent date;* and under these circumstances and within the authorities above cited it was proper to show in answer that he had previously told the same story."

Mrs. Pryor also says that the property was knocked down to her husband. An attempt was made by de-

fendants' counsel to show that she was too far from the sale to hear anything about it, but the contention of counsel evidently grew out of a misunderstanding of her testimony as to *where* she was standing while the sale was going on. He understood her to say that she was standing at the window of her house *across the alley*, whereas she says (Rec., 344) she meant the window of the house *on the lot*, which house on the lot was across the alley from the house where she was living at the time of giving her testimony. Her language is, "I was in my house [on the lot], at the front window, and could see. It [the house] was just across the alley [from her home], and they had not built there then"—that is, the houses which McIntire subsequently built there were not then on the lot to obstruct the view.

The only way by which the court can find that the property was not knocked down to Pryor is by throwing completely out of the case the entire testimony of these five witnesses, whose credibility is unimpeached, and who are not contradicted by a single witness except Edwin A. McIntire, whose testimony is so tarnished by palpable perjuries and forgeries that it would be, we respectfully submit, a mockery of the rules of evidence to call him a *credible* witness.

So that we say the property was, as matter of fact, knocked down to Pryor in pursuance of some arrangement between him and McIntire. How is it, then, that a paper (Ex. A. H. No. 21; Rec., 444) produced by McIntire and purporting to be the bill of Coldwell, the auctioneer, for crying the sale, makes it appear as if Jenison had bid in the property? The answer is, first, that the paper has been *tampered* with. The *date* of the sale is in a different handwriting, and the figures $25 have been palpably changed. The name of the purchaser is at the end of the bill, and could have been added long after the sale; but, aside from this, the paper, even if *genuine*, being a mere *ex parte* statement by a third party, not even a witness in the case, is the merest *hearsay*, and under a plain rule of evidence, does not even *tend* to prove the

statement written upon it; but, suppose it were admissible, it is easily explained. Complainant's counsel, as we have said, do not contend that McIntire ever for one moment intended to make a deed to Pryor of the property in pursuance of his bid. He well knew that he, as trustee, had no power to enter into any such arrangement, but a man such as McIntire must be if "Emma Taylor" be a fiction and her pretended signatures forgeries (and if they are not proved to be forgeries, then our case is at an end) could very well let the property be knocked down to Pryor for the purpose of disarming and quieting him and then some time afterwards get the auctioneer, who was his intimate business friend and who had, as the evidence shows, his office with him (Rec., 638) and made all of his sales, to make out the bill as if Jenison were the purchaser on the statement that Pryor could not perfect his bid and was willing that Jenison should, under some arrangement which McIntire could make plausible enough to Coldwell, buy it in at 31 cents a foot. Why should Coldwell refuse to do this? He had no reason to suspect any fraud, and McIntire was ready to pay him when he presented his bill. Many another man would have done the same thing without the slightest idea of wrong. Of course, we are only left to surmise as to the origin of this bill of Coldwell; hence the importance of the rule of evidence which declares it *inadmissible* as proof of a sale to Jenison. Coldwell is not alive and, of course, could not explain its origin. But if he were alive and were to swear that he knocked the property down to Jenison and not to Pryor, then he would stand contradicted by five witnesses, each of whom is at least of equal credibility with himself.

The proof that McIntire never intended to let *Pryor* have the property is found in the letter *which McIntire wrote and addressed to himself*, but got Jenison to sign, authorizing McIntire to bid on this property for him, Jenison (Ex. A. H. No. 5; Rec., 430).

But while to the intelligent lawyer McIntire's arrange-

ment with Pryor to let him bid in the property and pay for it either in notes or installments could but seem absurd and preposterous, it did not seem so to an uneducated and unsophisticated colored wood-sawyer and whitewasher such as Pryor was. With his confidence in McIntire and with the latter's intelligence, no one can doubt how easily this old darky was but wax in his hands. But we have perhaps given too much time to this feature of the case, because it is utterly immaterial whether the property was knocked down to Pryor or not, since it is not necessary to claim anything from it except so far as it is a circumstance going to show the unfaithful character of the trustee and his *mala fides* in respect of his trust. The bill, of course, recites this fact among other matters, as showing McIntire's fraudulent dealings with the property, and while we insist that we have proved by credible witnesses the charge that it was knocked down to Pryor, and proved that he complied with his bid, according to the understanding had with McIntire, by paying rent until he was prevented by McIntire from doing so any further, and while it is true that relief can be granted upon that ground alone, yet relief may be granted upon the further ground set forth in the bill, to wit, that "*the said* [*foreclosure*] *sale having been made in pursuance of a fraudulent scheme on the part of said E. A. McIntire to obtain said property for himself, the same is wholly void and should be so declared*" (Rec., 10). And, again, the bill elsewhere repeats the charge "that the said sale was made by the trustee, McIntire, really *in his own interest and with the intent to obtain for himself by fraudulent representations to complainant, her late husband, and the said Jenison the title to the said property*," &c.

Under this charge it is immaterial, as we have said, whether the property was knocked down to Pryor or to Jenison. In either event, it was the initial step in a series of fraudulent manipulations of the property whereby the record title finally reached McIntire cloaked under the name of "Emma Taylor." We might be quite willing, therefore,

to concede that everybody is swearing falsely but McIntire, and that the property was, as matter of fact, struck off to Jenison for $806, although, as we have shown by the testimony of four or five well informed witnesses whom nobody contradicts but McIntire, that it was well worth from $1,800 to $2,400, and the trustee, therefore, had he been faithful to both parties to the trust, as he should have been, would not have so sacrificed the interests of one of them.

Let us therefore follow the history of the property, as disclosed by the evidence, on the assumption that the sale was to Jenison, as McIntire claims it was. We concede, as we have said, that the Pryors were in default to Jenison, and that McIntire had a perfect legal right at Jenison's request to foreclose the trust. We concede also that Jenison had a perfect right to request McIntire to bid for him a sufficient sum to protect his interest, and that even if the bidding at the sale amounted, as it undoubtedly did, to a mere mock auction, yet it is too late, since Jenison was no party to the fraud, to seek relief after this lapse of time against Jenison if he or his *bona fide* grantee for value were here opposing such relief; but, as we shall see, there is no *bona fide* grantee for value before the court opposing the setting aside of the sale, and Jenison, so far from opposing it, consents to it and asks that it be done; but of this hereafter. Our purpose now is to present to the court the history of McIntire's dealings as trustee with the property from the moment it was struck off, *as he claims*, to Jenison.

June 17, 1881, is the date of the foreclosure sale. McIntire testifies (Rec., 190) that the expenses of the sale, viz., trustee's commissions, $40.30; auctioneer's fee, $23.12, and advertisement in the *Critic*, $24.46, or a total of $87.88, Jenison declined, because of inability, to pay. The taxes, general and special, amounted to $278.81. Jenison was, of course, told the expenses, at least, must be paid before a deed could be made to him of the property. It was also duly impressed upon him that the special taxes "must be

paid at once; otherwise the District itself would foreclose the property" (Rec., 396). Of course, Jenison, as McIntire knew, because Jenison had previously told him so (Rec., 37, 395), had no money to pay off these charges, and the result was just as McIntire intended: Jenison, at McIntire's suggestion, makes his note to the fictitious but ever convenient "Emma Taylor" (of course believing her to be a genuine person, for McIntire claimed to be her agent) for $425, payable in one year, and secures it by a deed of trust upon the property executed to E. A. McIntire as *sole* trustee. This deed, drawn by McIntire (Exhibit A. H. No. 26; Rec., 447), was dated and acknowledged June 29, 1881, just twelve days after the foreclosure sale. It is admitted by McIntire that none of this $425 was actually paid to Jenison. He says, however, he disbursed it for him, although as to the item of $278.81, special taxes, he "does not remember" whether he paid it immediately or not, as there was, he says, sometimes "an advantage in delaying the payment" (Rec., 260).

The ostensible purpose of this trust deed, it will be observed, was to raise the money to pay off these taxes and expenses of sale so that Jenison should take the property in satisfaction of Pryor's $450 note, subject only to an incumbrance of $425. On the same day that this trust deed was executed to McIntire, viz., June 29, 1881, McIntire in turn executed to Jenison a deed of the Pryor property in alleged pursuance of the foreclosure sale.

The *paper* title to the property is now in Jenison, *but not the record title*, for although the deed securing "Emma Taylor" was recorded a few days afterwards (July 11), the deed from McIntire to Jenison was not recorded for nearly *ten months* afterwards, viz., April 21, 1882 (Rec., 8). During all this period the deed was in McIntire's possession (Rec., 44). He says he handed it to Jenison, but admits the latter handed it back to him (Rec., 207 and 254). His excuse for not recording the deed is that Jenison would not give him the $1.50 recording fee. Jenison, on the other hand, says,

and we can readily believe him, that he has no recollection of ever refusing to pay the $1.50, but that he is confident "that if he [McIntire] represented that it was necessary for me to pay that fee I should not have refused" (Rec., 395). It is hardly credible that McIntire with $425 (received by him, as he says, from "Emma Taylor") in his hands to pay the *expenses* of the transaction, and also being the collector of the rents of the property for Jenison, he (McIntire) would fail to record so important a deed for the lack of a dollar and a half, especially as it was his duty as "Emma Taylor's" agent to record it when she made the loan on the strength of Jenison's title. He evidently had a *purpose* in keeping the deed off the record. It is important to note, also, that McIntire says (Rec., 253) he gave "Emma Taylor" the abstract of title upon which the loan of $425 was made by her. If he did, the abstract would have shown that at that time the record disclosed no title, legal or equitable, in Jenison, since the deed to Jenison was not then recorded and was not recorded until ten months afterwards; and yet he would have us believe that "Emma Taylor," who, on his own showing, knew enough of lending money on real estate to require an abstract of title, loaned on the strength of an abstract which showed by the *recorded* deeds that the borrower did not own the property!

This $425 note of Jenison's to "Emma Taylor" would become due in one year, viz., June 29, 1882. As it neared maturity, Jenison grew nervous; he had not the money to pay it. McIntire had promised him that he would endeavor to find a purchaser of the property before the note fell due, so that Jenison would get back at least a part of the four hundred and fifty dollars loaned to Pryor, not a dollar of which he had yet received. But it was entirely foreign to McIntire's purpose to find any other purchaser for that property than "Emma Taylor." The failure to find a purchaser was but carrying out his plan to bring Jenison to "a frame of mind" that would make him think a favor would

be conferred upon him if he could but be permitted to turn the property over to her in satisfaction of the note which he supposed she held; and so we find Jenison disheartened with bad reports as to the chances of sale. Jenison says (Rec., 397) he [McIntire] told him that he could not find a purchaser; "that the property was not eligible." No one, he was told, would give a thousand dollars for it, which was about what it must bring to make Jenison whole. Jenison himself was entirely ignorant of the real value of the property; he had never seen it.

"Q. Did you have any idea or knowledge as to the value of this property other than you had obtained from Mr. McIntire's representations to you as to its value?

"A. Not at all.

"Q. Did you make any inquiries yourself?

"A. I did not. I was engrossed in my office duties and took no interest in real-estate matters, but relied implicity upon what Mr. McIntire told me about real-estate matters, supposing that he was better posted in that line.

"Q. From the statements which he made to you in regard to the property, you became possessed of the idea that it was not a very valuable piece of property?

"A. I did."

Rec., 397.

This was the state of Jenison's mind as the note neared maturity. His agent, upon whom he relied so implicitly to sell the property and bring him out without loss, was undoubtedly working in his own interest and not his principal's, and so to Jenison the prospects looked bluer than ever. He had even asked McIntire to make an exchange of it for a piece of unincumbered land, which, of course, McIntire reported "could not be effected." What is to be done? He is already out $450 on account of the Pryor note, and he is soon to be called upon to pay $425 more, with nothing to show for it but a piece of property which his agent, an experienced real-estate broker, has informed him can neither

be sold or exchanged, even for enough to pay "Emma Taylor" her $425, and yet a half dozen qualified witnesses tell us the property was worth from $1,800 to $2,400! What more natural thing for Jenison to do under such circumstances than to sit down and write to McIntire this letter about two weeks before the maturity of his note:

"TREASURY DEPARTMENT.
"REGISTER'S OFFICE, *April* 13, 1882.

"E. A. MCINTIRE.

"DEAR SIR: I take it for granted that you have not effected any trade or exchange for my lot, and I presume there is not much prospect of making a sale before the maturity of the trust deed. I do not think there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on; besides, I am not in a condition to carry it.* I shall doubtless have to submit to a sacrifice by forced sale, but may realize a little over the incumbrance should there be any competition in bidders. Unless you think you can do better, I wish you would advertise and do the best you can in its disposition. If you happen to be up to the Treasury, please call. I have looked into your office several times, but found you '*non est.*'

"Truly yours, H. JENISON."

Ex. A. H. No. 6; Rec., 430.

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*"Not in a condition to carry it." How thoroughly Jenison's eyes had been shut by this man. The evidence shows that the Pryors were and had been for nearly a year paying six dollars a month rent for this lot, $72 a year. The interest on the note was 8 per cent., or $40 a year, and yet Jenison could not carry the note! Why not? Because McIntire never told him that he was *renting* the property. This money he was putting into *his own* pocket. "I did not know that the property was being rented," says Jenison (Rec., 40), and he is "positive" that he never received a dollar from it except the one hundred dollars received some years afterwards for a quitclaim, and this McIntire practically admits, but says he accounted for the rents by expending it in repairs, when there was nothing but a "shanty," as he himself calls it, on the property—a small one-room frame, used as a coal office, and which cost originally probably $25 to build. It is impossible to make us believe that he spent $72 a year *repairing* this shanty or even the wooden fence around the lot.

When we consider that by the uncontradicted testimony of a number of real estate experts this property was at that time worth over $2,000, this letter puts plainly before us how completely in the dark McIntire had kept Jenison as to the real value of the property. The foot-note shows how he had had his eyes shut as to the renting of it. Had this property been put up at a fair sale it would undoubtedly have brought from four to five times the amount of Jenison's indebtedness; but if it had brought only 25 cents a foot, which would be 6 cents a foot less than it brought at an alleged "honest" auction sale less than ten months previously, it would have paid off the "Emma Taylor" note and left a small sum over for Jenison; for at 25 cents a foot it would have brought $600. Jenison wanted an auction sale. He says (Rec., 398):

"I had become convinced it [an auction sale] was the only way to clear myself, because, as the note was nearly matured and there was no other alternative, I thought it better to submit to a sacrifice and have the matter disposed of."

But an honest properly advertised auction sale would have defeated the plans of him whose manipulations of the property from the day Pryor first came into his office for help had been one consistent scheme having for its object the obtaining of the title to it. It was important, therefore, to get Jenison out of the notion of an auction sale, and so an interview is immediately had with him, and here is the result of their conversation, according to McIntire's own testimony (Rec., 192):

"He asked me [McIntire] whether I could not get Miss Taylor to take the property from him. I interviewed her. *She at first did not want to do it*, but afterwards consented to do it and the deed was made by him and his wife to Emma Taylor."

"Emma Taylor," the woman who was "always looking out for bargains," who had loaned $425 on over $2,000 worth

of property, "did not want to take it at first at $425, but afterwards consented" to take it at one-fifth of its value! This is the way our credulity is to be strained in order to believe this man. It is the reading of McIntire's testimony more than any other evidence in these cases which must convince any reasonable mind that "Emma Taylor" is E. A. McIntire. On every page where he speaks of her it is perfectly palpable that he is manufacturing his statements, just as he manufactured his "Emma Taylor" deeds, his Ackerman deed, and his Pryor deed to Martha McIntire, and spoliated the many papers in these cases.

The deed in fee from Jenison and wife to "Emma Taylor" is dated and acknowledged April 19, 1882, ten months and two days after the foreclosure sale, and more than two months *before* the Emma Taylor note was due, showing the expedition with which McIntire proceeded in his determination to get the title out of Jenison and in himself, for the conveyance to "Emma Taylor" was practically a conveyance to himself. It was recorded at once, viz., April 21, 1882. The *record* now shows that Jenison has parted with his entire interest, legal and equitable, to the Pryor property to "Emma Taylor," viz., E. A. McIntire. Consequently the time has arrived for McIntire to record *his* deed to Jenison, and accordingly it is taken from McIntire's safe, where it had lain for these ten months, and accompanies Jenison's deed to Emma Taylor to the record office; they are recorded *together* in Liber 1003, the deed to Jenison at folio 187, and the deed *from* Jenison at folio 188. Both of these deeds were subsequently returned by the recording office *to McIntire*, whereas Emma Taylor was the person to whom they should and would have been returned had she not been a fiction. We have already noticed the fact that every one of these Emma Taylor deeds was returned, after being recorded, to E. A. McIntire, and yet he tells us that he has "no recollection" of a single one of them being returned to him.

If we consider that had McIntire placed upon the record his deed to Jenison immediately after its execution it would have been in Jenison's power to convey a good record title to any purchaser independently of McIntire and without his knowledge, and thereby have defeated any scheme of his to eventually obtain the title for himself, we will readily see McIntire's *reason* for not recording it at once; but, of course, *after* Jenison had conveyed in fee to "Emma Taylor" there was no further danger on that score, and at once his deed to Jenison—so necessary to perfect the record title—goes to the recording office. The fraud is consummated. Pryor and Jenison have been successively and successfully juggled out of the property, and neither has a dollar to show for it. Jenison has lost his mortgage and Mrs. Pryor her property. The trusted agent of both has gobbled up everything in sight. Different minds may draw different conclusions from the facts as we have recited them, but they must all reach in the end the one salient, undeniable, ultimate fact that E. A. McIntire has perpetrated a consummate fraud, and that Pryor and Jenison are his victims.

But the learned counsel for the defendants have contended that as Mrs. Pryor was in default in not paying her note, the trustee, McIntire, had a right to sell, and, conceding "Emma Taylor" to have been a fiction, yet the party defrauded is Jenison and not Pryor, and therefore no relief can be had on a bill filed by Pryor alone. This contention, we submit, grows out of a complete misconception of the law.

As was said by the court in Lewis *vs.* Denison (2 App. D. C., 382):

"*For the punishment and prevention of frauds and in the interest of morality*, the defendant should be held estopped to plead that he did not make a *bona fide* sale of plaintiff's lots, and that he defrauded *another* instead of the plaintiff in converting to his own use the difference between the money realized and the money paid over. To this it may be an-

swered that *the defendant was the agent of both plaintiff and Battelle.*"

Mrs. Pryor was entitled to an *honest* foreclosure sale, not a sale made, as the bill alleges, " really in his [the trustee's] own interest and with the intent to obtain for himself " the property. If it be true that the trustee, McIntire, when he exposed the Pryor property for sale for the admitted default in the payment of her note, did not do so in *good faith* and with an impartial purpose to protect the best interests of *both* parties to the trust, to wit, Pryor and Jenison, but, on the contrary, with a view solely to *his own* interests, making the sale as *one step* in a series of steps necessary to be taken, and which were, accordingly, afterwards taken, to the end that he, McIntire, should eventually obtain the title to the property, then we say we have established the allegations of the bill, and such a sale cannot be allowed to stand if either of the *cestuis que trustent* object to it, and *a fortiori* if the objecting *cestui que trust* be the owner of the property. A sale of trust property must be a sale for *bona fide* purposes and not as a step in the execution of a fraudulent purpose on the part of the trustee to obtain the property for *himself.* That he had the legal right to make the sale when requested by the holder of the note will not make the sale valid if it was not made by the trustee with the *intent* to protect the interest of both parties, but, on the contrary, with the single view to advance the trustee's own interest.

A trustee cannot act impartially and honestly when he is acting with a secret and fraudulent motive, although his act have the outward appearance of being in behalf of the parties to the trust. If the *motive* of the sale was not to benefit the parties, but himself, and if the *result* of the sale has been to benefit himself and injure both the *cestuis que trustent* or either of them, the sale, of course, is voidable at the request of either of the parties injured. The only question is, Has Mrs. Pryor proved the charge? If she has, it matters not that

she was in default. That fact did not disentitle her to the services of an honest trustee, acting with an honest purpose to advance the interests of his *cestuis que trustent* rather than his own.

McIntire's dealings with the Pryor property show a course of conduct consistent with but one theory and no other, to wit, a purpose on his part from beginning to end to defraud both Mrs. Pryor and Jenison out of it. His actions were taken first to so shape the conduct of Mrs. Pryor as to bring about his apparent right to sell her out, and, having succeeded in this, the evidence shows that he did immediately claim to have sold her out and at a price largely disproportionate to the real value of the property, so that he would have nothing to pay her after her defaulted note was satisfied. Having got her out of the way, he proceeds in the same purpose with Jenison. These acts all relate to each other. Even taken separately, they indicate fraud; but taken *together* the *fraudulent motive* becomes irresistibly apparent. They were initiated in fraud and consummated in fraud. A foreclosure sale made under such circumstances is too deeply stained with treachery to stand, when it appears to the court that it was undertaken solely for the benefit of the trustee and resulted *solely* to his benefit. The parties who should have been benefited have both been swindled by his action; both of them cry out against it. *To set aside the sale will enable the borrower to regain her property and the lender his money.* Who opposes it?

McIntire himself does not oppose it. Being the trustee, he cannot, of course, do so. He disclaims, therefore, all interest; but his sister, Martha McIntire, steps forward and declares herself to be an innocent purchaser for value. We have already shown that she is nothing of the sort; that she has signally failed to show that she ever paid so much as a single dollar for this property. Her swearing that she knew "Emma Taylor," had seen her, and had more than "ten relatives" who had seen her, etc., show her to be utterly

unworthy of belief; and, moreover, her brother's knowledge, as her agent, is, as we have seen, her knowledge.

But McIntire insists that his dealings with the property have been free from all fraud; that the deed in fee of Jenison to "Emma Taylor" was a conveyance to a genuine person and not a fiction; that, moreover, she was a *bona fide* grantee for value, and was the owner of the property from that date until May 31, 1884, when she conveyed (?) to his sister Martha, who is the principal defendant in this case, and indeed in all of these cases but that of Hayne.

We have already discussed the question of the fictitiousness of "Emma Taylor," but it may be well to note here that if "Emma Taylor" were a genuine person, as McIntire claims, then from the date of Jenison's deed to her until she conveyed to Martha, viz., from April 19, 1882, to May 31, 1884, a period of about thirteen months, she was entitled to receive the rents of the property. McIntire is closely questioned in regard to these rents (Rec., 247–309), and he repeatedly declares he has "no recollection" of collecting them for "Emma Taylor." On the other hand, we show written receipts from him to Pryor for the rents of this property covering the period when, as he says, "Emma Taylor" owned it, and, as shown by the auditor's report, bills paid by him for repairs and taxes upon it for the same period. These receipts are as follows: April 15, 1882, and May 12th, June 15th, July 15th, and August 15th of that year (Ex. A. H. No. 1; Rec., 424). We also show his written receipt for March 18, 1883 (*id.*), and also a postal card of the same date directed to Pryor and telling him to "please call and pay his rent" (Ex. A. H. No. 52; Rec., 464). That he collected the rents for those months for which no written receipt can be produced there can be no reasonable doubt. Besides this we show by the testimony of Fitzhugh, a clerk from the tax office, that the taxes for this property for the period in question and long afterwards were paid by McIntire's check (Rec., 121), and the witness Darneille (Rec., 61),

also a clerk in the tax office, shows that they were still being paid by McIntire in 1891, and though McIntire denied all of this at first, as soon as the decree of the Court of Appeals was against him he went before the auditor and admitted it all by showing his receipts for these very taxes and claiming credit for having paid them, and not only for taxes, but for *repairs* made by him during the same period. If all these rents and taxes and repairs were being collected and paid for up to May 31, 1884, on "Emma Taylor's" account, as they must have been if she owned the property up to that date and as he insists she did, it certainly is not unreasonable to ask that some evidence of his accounts with her, or receipts, or letters, or written evidence of some sort, be produced which would at least *tend* to show dealings with her; but though frequently called upon to produce such evidence, McIntire reluctantly admits that he has nothing of the kind.

So of the deed which McIntire and his sister claim was executed by "Emma Taylor" on the 31st day of May, 1884 (Ex. A. H. No. 14; Rec., 406), and which purports to convey the Pryor property and the property described in the Southey case to Martha McIntire for a consideration of $2,500. We beg to ask the careful inspection of this deed (which is before the court, Ex. A. H. No. 14); it is a plain forgery and so testified to be by the experts (Rec., 93 and 785). The manufactured signature of "Emma Taylor" is, as usual, utterly unlike any of her other alleged signatures. One of the badges of fraud in connection with this deed is that it, like all the other "Emma Taylor" deeds, was not recorded until long after its date, in this particular instance not until October 14, 1884, nearly two years and a half.

The failure of McIntire's testimony to "dovetail," as it were, is well illustrated by the above deed. It will be remembered that the Southey property, according to McIntire, was worth about $1,175. At page 876, McIntire is interrogated in reference to the sufficiency of the price

which the Southey property brought at the foreclosure sale, viz., $1,175:

"Q. So you think it brought its full value?
"A. *Yes, sir; in my estimation.*"

Deducting, therefore, $1,175 from the $2,500 paid for the two properties, we have $1,425 as the approximate value placed upon the Pryor property by McIntire in May, 1884. He also says that he considered the two properties "a bargain" at $2,500; so that what three years before Martha had refused to take from Pryor for five dollars, subject to an incumbrance of about $700, because she did not consider it worth that much, she now pays "Emma Taylor" more than twice as much for, viz., $1,425 cash, and considers it "a bargain." Moreover, it will be remembered that although this property was worth, even on McIntire's showing, $1,425, "Emma Taylor" "did not want to take it" from Jenison even at $425! When people tell several stories their inconsistency can be made apparent if they are lies. McIntire relates the manner of the purchase by his sister of this property from "Emma Taylor." He says (Rec., 261), "She ['Emma'] called at my office and asked me if I could find a purchaser for the [two] properties, as she wished to use some money at once and would sell cheap." She wanted $2,500. He does not *remember*, nor does his sister, whether any price was named separately for the two pieces. "There might have been something said about the separate values, but I have no *recollection* of it now" (Rec., 261). "It was just lumped." The whole amount was paid cash down, but, as usual, he does not *remember* whether he paid it by check or in money; he does remember, however, that his sister gave him the $2,500 in cash to pay it with, but he says if he paid it in cash he took no receipt. And his sister Martha for the life of her cannot tell how, when, or where she got or paid this $2,500!

On the 1st day of October, 1886, McIntire made a con-

tract in his sister Martha's name with Medford & Waldron, builders, to erect four small houses on the property for $3,600. Medford (Rec., 48) testifies that he never saw Martha in the transaction; that every dollar was paid him by McIntire either in cash or by his check, and neither McIntire nor his sister show where the money came from that they claim was hers, a matter which could have been easily proved if it really was her money; but we have dealt elsewhere with the question of Martha's financial abilities and need not repeat our argument upon this point. He continues as before to pay the taxes and collect the rents, and while he could not *remember* doing so for "Emma Taylor" he has no difficulty in remembering (?) that he did so for Martha.

September 27, 1887, McIntire discovered a flaw in the acknowledgment of Jenison's deed to "Emma Taylor" and obtained from him a quitclaim to Martha (Ex. A. H. No. 17; Rec., 439). For this quitclaim deed McIntire says he paid Jenison one hundred dollars, because the latter demanded that sum. On the other hand, Jenison says (Rec., 39, 40) that when McIntire handed him the check "it was quite unexpected," for he (Jenison) had never demanded anything for giving the deed; that when he received the money he supposed McIntire had been able "to realize something for him out of the transaction"—a transaction out of which up to that time Jenison had stood a loser to the extent of his $450 loan, without a single dollar to show for it. It is, immaterial, however, how Jenison understood it, for at that very time, if McIntire had accounted to him for the rents of the property which had been collected and pocketed by him, there would have been payable to Jenison very much more than one hundred dollars, so that, in point of fact, the payment was simply a payment to Jenison of a part of the latter's own money and not a consideration for this quitclaim.

The property thus stood in Martha McIntire's name, the rents being collected by E. A. McIntire. If these rents were

ever paid over to her previous to 1889, when the fictitious character of Emma Taylor was first discovered by his nephew, Henry McIntire, there is no evidence of it except the mere assertion of McIntire and sister. No books of account, no checks, no receipts, nor any written evidence of any sort are produced to substantiate their mere statement. Certainly, if these rents had been collected by him for Martha and paid over to her, as he says they were, he would have some slight written evidence, if only in checks received by her. Nothing of the sort is produced. It is true he offers in evidence a batch of forty-nine checks (Ex. A. H. No. 31), which he says were payments to Martha on account of rents of her various properties, but on examination it will be found that not one of these checks was delivered to her. McIntire's explanation, such as it is, is that he would draw a check to his sister's order, have her indorse it, then pay her the money, then indorse the check himself, and deposit it *to his own credit* in bank—a very roundabout way for a *straight* transaction, to say the least of it. A few of the checks with his indorsement being the last upon them, he claims were thus paid to Martha by the bank, but there is no other proof of this than his word, and that, we submit, is worthless. It was a very unusual method and contrary to the known course of business in the payment of checks by a bank, for it is a matter of common knowledge that when checks indorsed by more than one person are paid by banks the *last* indorser is the person to whom the payment is made, and McIntire's name is the last indorsement on *all* of these checks. His cross-examination in respect of these checks will be found on pages 678 *et seq.* of the Record, and attention is invited to it as a specimen of "an explanation which does not explain."

Mrs. Pryor up to this time had a right to regard "Emma Taylor" as a genuine person and an innocent purchaser of the property out of which McIntire had defrauded her, and if "Emma Taylor" were such Mrs. Pryor would have no

standing in court; but time at last makes its disclosures. The record shows, and it was so found by the court below (Rec., 477), that in 1887 a bill was filed in the supreme court of the District of Columbia by Henry E. McIntire against his uncle, E. A. McIntire, in which it was alleged that his said uncle, being his trustee, had defrauded him of certain real estate by having him convey the same to one "Emma Taylor," *and that said "Emma Taylor" was a fiction.* When the knowledge was brought to Mrs. Pryor's counsel of the existence of that suit and the charges of the bill as to the fictitiousness of "Emma Taylor," it was the first intimation that Mrs. Pryor had of the manner in which she had been defrauded of her property, for ignorant and unlettered persons, especially women of the station in life of Mrs. Pryor, although they may believe they have been defrauded, are often unable to say *how* it has been done. Being thus unable to tell her counsel, he was without facts to prove her case, and was, of course, unable to proceed; but the intimation of the fictitious character of "Emma Taylor" obtained from this charge of McIntire's nephew explained many things that were until then unexplainable. It was at once seen how the fraud was perpetrated, and as a consequence the bill was filed.

Have we proved the charge of the bill?

Conceding we have done so, should the relief prayed for be granted?

If we deal solely with the testimony of the *credible* witnesses in this case and with the documentary evidence, with all the inferences to be drawn from the spoliated and suspicious condition of the deeds and other papers, the conclusion is inevitable that Pryor and Jenison were both defrauded by McIntire, and that his entire dealings with the property were, to use the language of the bill, "in pursuance of a fraudulent scheme on the part of said McIntire to obtain said property for himself." As to Martha, it is equally as

conclusive that the evidence fully establishes the charge of the bill, viz:

"That the said defendant, Martha McIntire, paid no consideration for said real estate, and that the said conveyance was made to her in pursuance of the fraudulent design of the said trustee, McIntire, to cover up the fraud by him perpetrated on complainant and with the view that the benefits of the said property should inure to him as the real though not apparent owner of said property, and complainant says that whether the said Martha paid any consideration or not for the said property she had *notice*, actual or constructive, of the said fraudulent acts of the said trustee, McIntire, and she cannot in equity hold said property against your complainant."

The only testimony in the case which can rebut the force of all the circumstantial and direct evidence going to establish the fraud is that of the three McIntires, but to receive their testimony the court must be satisfied that they are *truthful* and reliable witnesses, for if they are not truthful, or, as the law would say, credible witnesses, *their entire testimony* must be rejected. We have elsewhere dealt at length with the credibility of the McIntires as witnesses, and shown that as forgers and perjurers their equal has seldom been before a court of justice in a civil case.

With the utmost confidence, therefore, we say that the fraud charged in the bill and upon which its equity is founded is completely established—that is to say, we have proved, as there charged, that "Emma Taylor" is a fiction; that McIntire invented her, and that, cloaked in her name, his entire dealing with this property has been with the view to defraud both his *cestuis que trustent*, Pryor and Jenison, and thereby to obtain the property for himself; and, secondly, that Martha McIntire is not an innocent purchaser for value; that her confessed agent was the fraudulent trustee himself, and that even if she had paid value, yet, as the knowledge of her agent was constructively her knowledge, she cannot in equity set up a title to the property.

Now, as to the question of relief:

If the record title to this property stood at this time in Jenison, Martha McIntire being out of the case entirely, just as E. A. McIntire now is, since he disclaims all interest in the property, there would be no difficulty whatever in regard to the relief to be granted. Let us suppose that the bill had been filed by Mrs. Pryor against Jenison alone, asking that the foreclosure sale be set aside on the ground that he had been guilty of frauds in his dealings with her and in his conduct at the sale. Let us also suppose that to this bill Jenison had answered, saying, "I know nothing of these alleged frauds and I deny them; but I am quite willing that the foreclosure sale and the trustee's deed to me be set aside and that you be reinstated in your title to the property, provided you do as you offer, namely, pay me the debt which was secured upon this property and which your failure to pay when it fell due was the cause of the foreclosure." Of course, since the rights of no innocent third party have intervened, a decree setting aside the sale would be immediately made upon the coming in of such an answer, for a forfeiture is not a pleasant thing to a court of equity, and though it will be enforced when the facts and circumstances require it, yet, even in such a case, if the only parties interested in the transaction agree that the forfeiture may be waived and the sale undone the court will so decree. No one ever heard of a forfeiture being insisted upon by the court when the parties themselves agree to waive it. In other words, when the mortgagee says to the mortgagor, You may have back your property if you will pay the debt, the court will not concern itself with the question whether the mortgage was or was not rightfully foreclosed, but will aid the parties in reinstating themselves in their former position if it can be done without detriment to innocent third parties. Therefore in such a case it would be utterly unimportant, so far as Mrs. Pryor's right to relief were concerned, whether the foreclosure sale had been

properly conducted or not. The only party who could be injuriously affected by its being set aside consents in his answer to it being done. So in the case at bar, though we should concede for argument's sake that McIntire's testimony as to the conduct of the sale cannot be overcome at this lapse of time by the five witnesses who have sworn that Pryor was the purchaser and not Jenison; nay, more, though we should concede that the sale was in all respects just and fair; that the property brought its full value, and that whether it did or not it is too late for Mrs. Pryor to complain; in short, though we should concede everything that can be imagined which would entitle Jenison to demand a dismissal of the bill, yet if he does not demand it, but, on the contrary, *consents*, as he does in this case, to the sale being set aside and the relief granted which is prayed for, the court will so decree, provided no innocent purchaser for value has intervened; but Martha McIntire is here claiming to be that innocent purchaser. Let it be conceded for a moment that she is not such a purchaser, but, on the contrary, is all that we charge her with being; then she it is who has compelled Mrs. Pryor to resort to the courts, for it must be conceded that but for the deed to her Mrs. Pryor and Jenison could have settled the case out of court. We must therefore get Martha McIntire's fraudulent deed out of the way before Jenison's settlement with Pryor can be affected, and to do so we are forced to resort to a court of equity to have her deed canceled. Assuming for the moment, as we have said, that her deed is fraudulent, let us see what the situation is with her as a party defendant to this suit. The trustee, as we have seen, disclaims, as he must, all interest. The other two parties are the debtor and creditor, who are the joint victims of an unprincipled trustee, whereby one has lost her property and the other his money. They come together and wish to be reinstated in the position they were in before that trustee had by false representations, fictitious deeds, etc., juggled them out of every-

thing and placed the record title to the property in his sister's name, who never paid one dollar for it and had at least full constructive knowledge of her brother's fraud.

This debtor and this creditor (Pryor and Jenison) propose that the deed of trust shall be regarded as still existing, and that the debtor shall pay and the creditor receive the money now due upon the debt which the trust was intended to secure, but which by the trustee's fraudulent manipulations has failed up to this time to effect its purpose. This is opposed by the trustee's sister, in whom the fraudulent title stands, for, as we have said, the trustee, E. A. McIntire, necessarily disclaims all interest. The question immediately arises, Shall the court listen to her objections when the testimony clearly reveals that she has obtained the record title to the property not only without having paid for it, but through her brother's recognized agency and as the result of his rascality? With notice, actual or constructive, of all his frauds, she asks to be made the beneficiary of his acts! If, instead of nothing, she had paid three times what she says she paid for this property, even if she had paid it without actual knowledge of the fictitious character of "Emma Taylor" and of the other frauds of her brother, yet, as she admits that he was *her agent* in the entire transaction from beginning to end, his knowledge is constructively hers and would affect her as much as if she had actual knowledge; but, as we have seen, she is connected with the transaction only as a cloak for that brother. The deed under which *she* claims it is simply a cloud upon the real title. It is the obstacle which prevents Pryor and Jenison from settling their case out of court; but it is not an obstacle to the court itself. Equity does not allow its arm to be stayed on the plea that it is impotent to reach a wrong-doer. There is no fraud so circuitous that equity cannot follow it through all the convolutions of its sinuous ways, and no cunning so crafty that the chancellor may not circumvent it. When innocent parties desire to act fairly with each other and do equity

between themselves the wrong-doer has never so tangled the title that a court of equity may not unravel the meshes which his knavery has woven. Neither the faithless trustee nor those who have knowingly benefited by his acts will be suffered to keep their ill-gotten gains because of the intricacy of their dealings. That fraud can take no form which the decrees of equity cannot overcome is strikingly illustrated by a very recent decision of the Supreme Court of the United States in Angle *vs.* Railway Co. (151 U. S., 1), where Mr. Justice Brewer, delivering the opinion of the Court, uses the following apt language from Pomeroy's Equity Jurisprudence, section 155:

"If one party obtains the legal title to property, not only by fraud or by violation of confidence or of fiduciary relations, but *in any other unconscientious manner*, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in the favor of the one who is in good conscience entitled to it and who is considered in equity as the beneficial owner." And, again, in section 1053: "In general, whenever the legal title to the property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means *or under any other similar circumstances* which render it *unconscientious* for the holder of the legal title to retain and enjoy the beneficial interest, equity imposes a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps, have had any legal estate therein; and a court of equity has jurisdiction to reach the property *either in the hands of the original wrong-doer or in the hands of any subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right* and takes the property relieved from the trust. The *forms* and *varieties* of these trusts, which are termed *ex maleficio* or *ex delicto*, are practically *without limit*. The principle is applied whenever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrong-doer."

But we are told that improvements have since been made upon the property. Some $4,000 have been expended upon it. That is true, but what of it? *The Court of Appeals has allowed him his expenditures for these improvements*, so he has nothing on that score to complain of. Indeed, it would not have been error to have disallowed them, for E. A. McIntire, when he put these small houses there, *knew* that the property was neither his nor his sister's. It was not necessary for the owner to speak in such a case, for it is well settled that where one knowingly and in bad faith erects buildings or makes improvements on the property of another he cannot escape the result of his willful wrong-doing because the real owner failed to protest; but the evidence in this case is that Mrs. Pryor did protest. (See Medford's testimony, Rec., 48.) And whose money was it? Every check offered in evidence as proof of expenditures is E. A. McIntire's check. Not one dollar is shown (except upon the worthless statements of the McIntires) to have been expended by Martha McIntire; and, moreover, Martha McIntire is utterly unable to tell where she got this money to pay for these improvements. But whether it was the brother's or the sister's money that went to build these houses they are met by the axiomatic proposition that neither the thief nor the receiver of the stolen property, when the thing stolen is about to be wrested from them, shall be heard to say that if the rightful owner is allowed to reclaim the property the wrong-doer will suffer a loss of labor and money expended in improving it during the time he fraudulently possessed it. This very question of improvements by a *mala fide* purchaser has been decided in this jurisdiction.

"When circumstances of fraud exist on the part of a purchaser of real estate or his assignee with notice thereof he will not be entitled to compensation for improvements made on such fraudulently acquired property."

Beckett *vs.* Tyler, 3 MacArthur, 319.

All the authorities are to this effect, viz., that only *bona fide* purchasers making improvements in good faith under the supposition that the property is their own can be allowed in equity for the value of those improvements. (See Story, Eq. Ju., secs. 388, 656, 799*a*, and 1234 to 1239; Pom. Eq., sec. 1241.) From a note to the last-cited authority we extract the following as a concise statement of the law upon this point:

"In all these cases, however [of improvements made on the property of another], *the element of good faith and innocent mistake is essential;* for if a person lays out money on another's property with knowledge or notice of the true state of the title—*e. g.*, a purchaser with notice of another's title—he has no claim to be reimbursed and, of course, no lien. (Rennie *vs.* Young, 2 De G. & J., 136; Ramsden *vs.* Dyson, L. R. 1 H. L., 129; Cook *vs.* Kraft, 3 Lans., 512; Davidson *vs.* Barclay, 63 Pa. St., 406; Dart *vs.* Hercules, 57 Ill., 446; Cannon *vs.* Copeland, 43 Ala., 252.)"

But, as we have said, this question of improvements cannot arise in this case because the court below rightfully or wrongfully allowed the full cost of the improvements to the McIntires. They were not entitled to this allowance, in our opinion, but Mary Pryor, by reason of her poverty, has not been able to appeal from that part of the decree, and so all that she gets is her land without the improvements.

Now, what are the other grounds upon which it is claimed the bill must be dismissed and Martha McIntire allowed to keep this property?

It is said that even conceding that both Mrs. Pryor and Jenison were cheated by the trustee, still, as Jenison has given to Martha a quitclaim deed of all his right, title, and interest in the property, she cannot now be interfered with even if "Emma Taylor" be a fiction. Let us see how much there is in this defense, which, it will be observed, is based upon a concession that "Emma Taylor" is a fiction; and yet, in the answer to the bill it is admitted that this quit-

claim "was executed to cover and cure a defect in the deed from Jenison to [the fictitious] Taylor." The quitclaim, then, depends upon the existence of a *deed* to an alleged third party, but there is *no deed* when the alleged third party is a fiction. If it be true, as it undoubtedly is, that Emma Taylor is a fiction, then McIntire, acting as agent for his sister, well knew that as against everybody but Mary Pryor the legal and equitable title was in Jenison, and he (McIntire) was guilty of misrepresentation and fraud when he led Jenison to believe that he had parted with his title to a genuine person, and that he (Jenison) had no rights whatever in the property. Under such misrepresentations of fact Jenison made a quitclaim to property worth at least $2,000 and without an incumbrance upon it. A conveyance of property of that value for $100 under such circumstances is, of course, fraudulent and void, and Martha McIntire's title is no better by reason of such a deed than it would be without it. But there is more than this about it. It is conceded by the McIntires that Jenison executed this deed merely *as a quitclaim deed;* that it was intended to be such and no other. The words of the deed are "quitclaim," &c. So that a court of equity is bound to treat it as such. Now, a quitclaim deed, it is well settled, *passes* no title. If the party to whom the quitclaim is given has no title the fact that he has a quitclaim from another gives him none. Martha McIntire had no title whatever to the Pryor property at the time Jenison quitclaimed to her. Her title was traced from a fictitious grantor, and therefore a nullity. Consequently the quitclaim could have no operation upon it, and she stands under it without a particle of title to any of the properties in these cases. Under such circumstances we could have brought our action of ejectment against her and prevailed. But we come into equity because of the trust and because of our right to have a number of fraudulent deeds in respect of the property canceled and our title cleared of them.

Again, the one hundred dollars paid Jenison was, as we have seen, *Jenison's own money*, money which in the shape of rents had been collected by McIntire. If that be so, then the deed was a nullity for want of a consideration; for McIntire, when he paid Jenison the one hundred dollars, was only paying him what already belonged to Jenison.

Helmore *vs.* Smith, 35 Chan. Div., 436.

LACHES.

One more defense—*laches*, is set up in the brief, but not in the *pleadings*, a defense which is the common refuge of a recreant trustee when after a lapse of time his fraud has been discovered. Before dealing with the law of this defense, let us see what the *facts* are.

The record shows that the first time Martha McIntire let it be known to the world that she was claiming this property was when she recorded her deed, dated May 31, 1884, from "Emma Taylor," viz., nearly two years and a half after its date, October 14, 1886. Up to that date, as we did not and could not know that she was claiming to own the property, it certainly cannot be said we are chargeable with laches in not filing a bill against her, and she is the only defendant claiming any interest in the property.

"The making of a fraudulent deed and the *keeping of it off the record* by all the persons concerned in and cognizant of the transaction, combined with their purposed silence upon the subject, it certainly will not do to say is not a concealment for which relief may be granted" (McAlpine *vs.* Hedges, 21 Fed. Rep., 690).

But even then we had no reason to suspect "Emma Taylor" to be a fiction, and if we will consider a moment it will be seen that Mrs. Pryor was never in a position to file her bill against McIntire until she discovered or her counsel discovered for her that "Emma Taylor" was a fiction. As long as it was thought that "Emma Taylor" was a person

in esse and a *bona fide* purchaser from Jenison, no case that Mrs. Pryor could have put before counsel would have justified the filing of a bill for relief with any hope of success. Any equity that she might have had as against Jenison was rightly supposed to be cut off by his conveyance to "Emma Taylor," the supposed *bona fide* purchaser. What was there in any of the circumstances of the case to lead her to suspect the mythical character of this alleged grantee, even if we concede that a *cestui que trust* is bound to suspect her trustee?

Now, as we have seen, the first intimation which Mary Pryor had that "Emma Taylor" was a fiction was when Wm. E. McIntire in 1887 filed his bill in the equity court of the District of Columbia alleging that he had been defrauded out of his property by E. A. McIntire, and that the alleged person, "Emma Taylor," to whom he had conveyed the property at McIntire's instance, was a fiction. It was this allegation, made in a bill in equity filed in this District, which, when learned of by Mrs. Pryor's counsel, first suggested the fictitiousness of "Emma Taylor." The moment that was discovered, then, the *nature* of the fraud practiced upon Mrs. Pryor began to dawn upon her counsel. Investigation followed, and soon after, in 1890, a little over three years after the filing of the Wm. E. McIntire bill and a much shorter time after the knowledge of its averments came to Mrs. Pryor, her bill was filed. She has then been guilty of no laches. No court has said that two or three years after the discovery of a fraud of this sort is too long a time for the plaintiff to suffer to elapse before filing her bill.

But even if Mrs. Pryor learned of the fraud shortly after the original foreclosure sale, which was in 1881, she was in ample time in filing her bill. This is a case not of *construction*, but of ACTUAL fraud; and, furthermore, not of actual fraud committed by a party with whom the complainants were dealing at arm's-length, but of actual fraud committed

against us by our agent and trustee, one in whom we had a right to confide and did confide, nor are they cases of unconscionable bargains and overreaching cunning, which in the commercial world are too frequently countenanced until condemned by the keen conscience of the chancellor, but they are cases involving gross moral turpitude, forgery, false personation, spoliation of documents, and perjury.

In all such cases this court has laid down the rule (and it was followed by the Court of Appeals) as follows:

"*In cases of* ACTUAL *fraud in connection with* REAL ESTATE, *the rights of bona fide purchasers for value not intervening, courts of equity never refuse relief on the ground of delay if the delay after the discovery of the fraud is not longer than the period fixed by the statute of limitations, viz., twenty years.*"

This is the doctrine of this court, as we shall show in a moment. Undoubtedly there are cases where relief has been refused when the delay was less than the period fixed by the statute, but it will invariably be found on examining those cases that they are not in conflict with the foregoing formula—that is to say, they are either cases in which the question of fraud was not involved or cases of *constructive* fraud only.

One of the first of the leading cases upon this subject is that of Michoud *vs.* Girot, 4 How., 503, a case of actual fraud committed by trustees of real estate against their *cestui que trusts.* The bill was filed *thirty-six* years after the commission of the fraud. The estate of the complainants was equitable and their remedy only in equity. Mr. Justice Story, one of the greatest of American jurists, delivered an elaborate and well-considered opinion for the court, from which we quote (Rec., 560):

"In a case of *actual* fraud courts of equity give relief after a long lapse of time, much longer than has passed since the executors in this instance purchased their testator's estate. In general, length of time is no bar to a trust clearly established to have once existed, *and where fraud is imputed and*

proved length of time ought not to exclude relief (Prevost *vs.* Gratz, 6 Wheat., 481). Generally speaking, where a party has been guilty of such laches in prosecuting his equitable title as would bar him if his title were solely at law, he will be barred in equity from a wise consideration of the paramount importance of quieting men's title and upon the principle that *expedit reipublicæ ut sit finis litium.* Although the statutes of limitations do not apply to any equitable demand, courts of equity adopt them, or at least generally take the same limitations for their guide in cases analogous to those in which statutes apply at law (10 Ves., 467; 1 Cox, 149). Still, within what time a constructive trust will be barred must depend upon the circumstances of the case (Boone *vs.* Chiles, 10 Pet., 177). There is no rule in equity which excludes the consideration of circumstances, and *in a case of* ACTUAL *fraud we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it.*"

In White & Tudor's Leading Cases (vol. 1, part 2, p. 259) the same doctrine is laid down. The author, besides citing and quoting the foregoing from Michoud *vs.* Girot to sustain the text, says further:

"In the later case of Bowen *vs.* Evans, House of Lords cases, 257–282, the Lord Chancellor (Cottenham) stated the principle as follows in regard to the setting aside of *remote* transactions on the ground of fraud: 'When much time has elapsed since the transaction complained of, there having been parties who were competent to have complained, the court will not, upon *doubtful* or analogous evidence, assume a case of fraud, although upon fraud *clearly established,* NO LAPSE OF TIME will protect the parties to it or *those who claim through them against the* jurisdiction of equity, *depriving them of the effects of their plunder.*'"

In Baker *vs.* Whiting, 3 Sumner, 476, Judge Story reiterates this rule. In that case one Tidd, being the owner of certain *lands,* employed the defendant Whiting as his agent to take care of the same, pay all taxes, &c. Whiting allowed

the land to be sold for taxes in 1821 and bought it himself, keeping the plaintiff uninformed of the facts. The bill was filed in 1837 by the heirs of Tidd, who died shortly after his employment of Whiting. The defence, besides denying the fraud, was laches. The court found the facts as charged in the bill, and on the question of laches said

"Then it is said that the plaintiffs are barred from any right in equity by the mere lapse of time. It does not appear what were the respective ages of the heirs of Tidd at the time of the tax sale nor what was the age of Stimpson; and all of them were at that time (as it should seem) citizens of another State, and of course came within the common exception of the statute of limitations. But, what is *more particularly applicable* to the present case, *twenty years* had not elapsed before the filing of the bill, and I apprehend that in the case of trust of *lands* nothing short of the statute period which would bar a legal estate of right of entry would be permitted to operate in equity as a bar of the equitable estate. This doctrine seems to be admitted by the authorities ever since the great case of Cholmondeley *vs.* Clinton (2 Jac. & Walk., R. I.), and it has been repeatedly acted upon in the Supreme Court of the United States. Indeed, in the case of Prevost *vs.* Gratz, 6 Wheat. R., 481, it was broadly laid down that in equity length of time is no bar to a trust clearly established, and that in cases where fraud is *imputed and proved* length of time ought not, *upon principles of eternal justice*, to be admitted to repel relief."

Wagner *vs.* Baird, 7 How., 234, was a case of actual fraud committed in obtaining the title to lands in 1796 by one O'Bannon. He lived until 1812. In 1800 the defendants made purchases from him in good faith for full value, the land being then worth about one dollar an acre. They improved the land greatly and at time of suit it was worth about $30 an acre, as appeared from the undisputed statements of counsel in the case. The bill in equity was filed in 1840, forty-six years after the fraud committed and twenty-eight years after the death of O'Bannon and twenty-nine years after the defendants or those under whom they

claimed had purchased the property in good faith for value. *All* the parties to the original transactions were dead and innocent purchasers for value had intervened. This was a strong case for the presentation of the defense of laches, and the court so found, for it in nowise conflicted with the doctrine of Michoud *vs.* Girot. The language of the court in Wagner *vs.* Baird, upon the inequity of enforcing stale claims against innocent purchasers, has been the key-note upon which the changes have been rung in subsequent cases when the defense of laches has prevailed, yet it is important to observe that the court in that case upheld the doctrine of the cases which, as we have shown, declare that "the delay which can be set up in equity to bar relief must be for such period as would if the party were suing in ejectment bar his remedy." The following is the language of Mr. Justice Grier, speaking for the court in that case:

"In cases of concurrent jurisdiction courts of equity consider themselves bound by the statutes of limitations which govern courts of law in like cases, and this rather in obedience to the statute than by analogy. In many other cases they act upon the analogy of the limitations at law, as where a legal title would in ejectment be barred by *twenty years'* adverse possession, courts of equity will *act upon the like limitation* and apply it to all cases of relief sought upon equitable titles or claims touching real estate."

Thus we see that what was the law while Judge Story was upon the bench of this court was the law after he left it, and we shall see that it has been the law ever since. No varying from the rule can be found in any of the subsequent decisions of this court. Thus in Allore *vs.* Jewell, 94 U. S., 506, a deed of *lands* had been obtained from a woman by undue influence. Six years and nine months afterwards her heir brought suit to set it aside. The court granted the relief, saying "there is no *statutory bar* in the case." So in Insurance Company *vs.* Eldridge, 102 U. S., 545, where a trustee, at the instance of the com-

pany's agent, had released certain *real estate* from the lien of a trust deed which was prior in date to that of the defendant company. Laches and delay were pleaded, but the court said that it could not be set up as a defense "that the claim to have the instrument canceled by which the priority was secured was a *stale* one" when it was asserted *within the period allowed by law*, and no rights of third parties as *bona fide* purchasers have intervened to render inequitable the assertion of his original lien.

So, too, in Kilbourn *vs.* Sunderland, 130 U. S., 505, a case of actual fraud, the court says "the duty to commence proceedings arises only upon discovery, *and mere submission* to an injury after the inflicting it is completed cannot generally and in the absence of other circumstances take away a right of action unless such acquiescence continues *for the period limited by the statute for the enforcement of such a right.*"

And, again, in Hammond *vs.* Hopkins, 143 U. S., 24, though cited and much relied upon by Mr. Justice Hagner in his opinion, is a strong case to support the doctrine laid down in Michoud *vs.* Girot, heretofore cited, where Mr. Justice Story, speaking for the court, said that in no case of *actual* fraud could laches be set up as a defense *during the lifetime of the party charged with the fraud;* for in Hammond *vs.* Hopkins the court held—we quote from the syllabus which correctly states the decision:

"In all cases where ACTUAL FRAUD *is not made out*, but the imputation rests upon conjecture, when the seal of *death* has closed the lips of those whose character is involved and lapse of time has impaired the recollection of transactions and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence."

Thus expressly excluding cases where *actual* fraud is made out. It is to be observed also that death has not closed the lips of our trustee. If his character is involved he is here and vigorously defending it.

So in Speidel *vs.* Henrici, 120 U. S., 377–386, a case of con-

structive fraud, the Supreme Court, Mr. Justice Gray speaking for the court, quotes with approval the language of Chief Justice Marshall in Elmendorf *vs.* Taylor, 10 Wheat., 152, in which last-named case fraud, meaning *actual* fraud, was expressly excluded from the doctrine that lapse of time would bar relief.

"In such a case," Mr. Justice Gray said, "Chief Justice Marshall repeated and approved the statement of Sir Thomas Plummer, M. R., in a most important case, in which his decision was affirmed by the House of Lords, that 'both on principle and authority the laches and non-claim of the rightful owner of an equitable estate for a period of twenty years (supposing it the case of one who must within that period have made his claim in a court of law, had it been a legal estate) under no disability AND WHERE THERE HAS BEEN NO FRAUD [fraud being thus expressly excepted from the rule] will constitute a bar to equitable relief *by analogy to the statute of limitations.*'"

If this language means anything it means that in a case of fraud—actual fraud—even a non-claim for a period exceeding *twenty* years will not bar relief.

We confidently assert that the reports of the Supreme Court of the United States will be searched in vain for any doctrine in conflict with that laid down by these authorities. The numerous cases cited by the court in its opinion, so far from being at variance, are all in perfect harmony with this well-settled rule that where *actual* fraud is proved, and more especially where *real estate* is involved, no period of delay less than that provided by analogy to the statute will bar relief.

In Wherman *vs.* Conklin, a very recent case (October term, 1894), Mr. Justice Brown, speaking for the court, said:

"If the plaintiff at law has brought his action within the period fixed by the statute of limitations no court can deprive him of his right to proceed. If the statute limits him

to twenty years and he brings his action after the lapse of nineteen years and eleven months he is as much entitled as matter of law to maintain it as though he had brought it the day after his cause of action accrued," says:

"There is a class of cases which hold that where there is *actual* fraud no remedy at law is complete and adequate except that which removes the fraudulent title. As early as 1750 it was held by Lord Chancellor Hardwick, in Bennett *vs.* Musgrove, 2 Ves. Sr., 51, that a bill would lie by an execution creditor to set aside a fraudulent conveyance whether he could recover at law or not. Objection having been made to the bill upon the ground that the remedy at law was complete, the lord chancellor observed: 'But be it as it may, whether he could recover or not, he is entitled to come into this court, the *distinction* in this court being where a subsequent purchaser for valuable consideration would recover the estate and set aside or get the better of a precedent voluntary conveyance if that conveyance was fairly made without actual fraud, the court will say: Take your remedy at law; but wherever the conveyance is attended with actual fraud, though they might go to law by ejectment and recover the possession, they may come into this court and set aside that conveyance, which is a distinction between *actual* and presumed fraud from its being merely a conveyance.'"

And then Mr. Justice Brown, speaking for the court, says that while there may be a doubt whether this doctrine is in force in this country in *personal* actions the law is well settled as to *real* property.

Now, will it be said, after reading these authorities, that where a plaintiff, having the right to bring his action at law any time within twenty years, comes into equity because he can get more complete relief as to the fraud, he is to be told that equity is more favorable to fraud than a court of law and will bar him of the relief that a court of law would have given him? There can be but one answer to such a question.

There is still another principle upon which cases of actual fraud are held not to come within the rule that delay may

bar relief, and that is the principle of *estoppel*. A man who has committed only a constructive fraud has no moral turpitude upon his conscience. He may well have obtained the property in the most innocent manner. As in Hopkins *vs.* Hammond, he may have been a trustee acting in good faith and believing he had a right to do what he did do, purchasing and paying fair value for the property of his *cestui que trust*, the latter accepting the money without complaint and then, after allowing his trustee to rest for years in the quiet and honest belief that he has acquired a fair title to what he believes his own, suddenly and rudely awakes him with a charge of *constructive* fraud. Such a case is quite a different one from that of the trustee who obtains the property of his *cestui que trust* by *actual* fraud. Every moment that he holds the property he knows he is holding stolen property. He is not *misled* by delay into the belief that *he* has an honest title. Every night that he rests his head upon his pillow he has good cause to believe that the next morning he will be awakened with a charge of actual fraud and an exposure of his moral turpitude. He *knows* that the property fraudulently held by him is the property of his *cestui que trust*. Such a man, when his fraud is discovered and he is brought to a reckoning, is *estopped* in a court of equity to say, "You allowed me to keep the stolen property too long;" and this rule applies as well to his *mala fide* grantee as himself, and Martha McIntire fills that description in every particular.

This is the doctrine of this court in its most recent utterances.

Thus in Allore *vs.* Jewell, 94 U. S., 506, where the defendant had obtained the property by actual fraud and had set up as a defense the *delay* of complainant to bring suit, the court said:

"*It does not lie in his mouth after having in the manner stated obtained the property of the deceased to complain that her heir did not sooner bring suit against him to compel its surrender.* There is no *statutory* bar in the case."

And, again, in Insurance Co. *vs.* Eldridge, 102 U. S., 545, heretofore cited, the defendant insurance company, as we have seen, obtained through the known act of its agent a fraudulent release of a prior lien. The court held that since the company *knew* of the existence of the complainant's equity "*it does not lie in its mouth to object that the complainant did not sooner seek to set aside the priority of the lien thus gained.*" So in Kilbourn *vs.* Sunderland, 130 U. S., 505, a case of actual fraud, where delay was set up as a defense, the court say:

"The defendants *cannot be allowed* to say that complainants ought to have suspected them and are chargeable by what they might have found out upon inquiry aroused by such suspicion."

Again, in all cases where laches is set up as a defense, the question to be determined by the court is, "Where does the *balance* of justice lie after 'weighing' the equities (as it is called) of each side or, as the court say in Boone *vs.* Chiles, 'contrasting' them?" Would it be more inequitable to refuse relief than to grant it? Has the guilty defendant more equity on his side because of the fact that he has rested for a long time in the belief that he would not be disturbed than the plaintiff has, although the latter may have delayed an unreasonable time to ask for relief? These questions, as we all know, depend upon the nature and circumstances of each case; and the cases in which such questions are asked it need not be said are not cases of *actual, gross, and outrageous fraud*, filled to the brim and running over with moral turpitude, forgery, and perjury, but they are cases of *constructive* fraud, where the trustee, honest in his intentions, has committed some breach of trust, and with a conscience void of guile has improved or otherwise changed the status of the property, or himself, in the belief that the property is honestly his own, or cases where the evidence is vague or, at least, so *doubtful* as to leave room

for the just presumption that had the charge been brought earlier it could have been disproved.

The question we repeat is, What *wrong* will the defendant suffer if the plaintiff is granted relief, conceding that the complaint is made after long delay? "If a party has a clear right in equity and it appears that no unconscionable result will follow relief, mere delay in bringing his action will not cause a court of equity to refuse it" (Spurloch *vs.* Sproule, 72 Mo., 503); and says this court in Neblett *vs.* McFarland, 92 U. S., 100–105, "Parties engaged in a *fraudulent* attempt to obtain a neighbor's property are not the objects of the special solicitude of the courts." What *unconscionable* result will follow the taking away of property from a trustee and his *mala fide* grantee who never paid a cent for it? People who have robbed the poor widow and sought to cover their crime with forgery and perjury? The unconscionable result is in permitting them to keep it, not in forcing them to yield up what was never theirs and what they *knew* all along was never theirs. This was the opinion of this court in Insurance Co. *vs.* Eldridge, 102 U. S., 540, where it was held that *when the defendant has knowledge of the equities of the complainant* he cannot plead laches as a bar to the suit.

In Brooks *vs.* Martin, 2 Wall., 70, the parties were both men of intelligence; one was trustee and the other *cestui que trust* (partnership) The delay was over *nine* years, but the fraud was clearly proved. The controversy was over personalty, where a less period than in cases of real estate will bar relief, and yet relief was granted.

In Kilbourn *vs.* Sunderland, 130 U. S., 505, another case of trusteeship and personalty, the delay was *nine* years, but the fraud being proved the court granted the relief.

It is consoling to the victims of fraud to read the language of this court when the charge has been proved and the wrong-doer laid bare in all his iniquity. We would like if time permitted, to furnish your honors with a few such instances, but we shall have to be content with a brief ex-

tract from the case of Boone *vs.* Chiles, 10 Peters, 177. In that case the defendant by a systematic course of fraud, the details of which would require too much space to recite, but the moral turpitude of which was far less than in the cases at bar, obtained the legal title to certain lands in Kentucky to which the heirs of Boone were entitled. Laches and staleness of the claim were set up as a defense to a bill in equity brought by the heirs. The court, after a careful and minute review of the facts, said:

"Such is the case between the parties as presented by the pleadings, exhibits, and evidence. A court of equity must be regardless of all its rules before it can recognize Chiles [in the case at bar McIntire] as a purchaser or as having any right whatever in the land. *It must also forfeit its character if it sanctions such a course of iniquitous fraud.* We deem it wholly useless *to contrast the relative equities* of the plaintiffs and Chiles in order to affirm their right to a decree for the conveyance of the legal title, *obtained in violation of every principle* which governs courts of equity, unless he has made out some objection to the relief prayed on grounds unconnected with the justice of the case. * * * The lapse of time and the staleness of the plaintiffs' equity is also set up as a bar to a decree in their favor, but whatever effect time may have in equity in favor of a possession long and peaceably held, it can have none in favor of Chiles, whose only claim is under the equity of Thomas Boone and against whom the present suit was brought in six years after he first interfered with it. It cannot be permitted to him to acquire the legal title of Hoy in virtue of Boone's equity and to hold it to his own use on the ground that Boone's right had become extinct by the lapse of time before he acquired it. The means by which the legal title has been conveyed to Chiles *have affected his conscience too deeply with fraud to suffer him to enjoy its fruits.*"

THE OPINION OF MR. JUSTICE HAGNER.

The cases cited by Mr. Justice Hagner in his opinion have been carefully examined *seriatim* by us, and we are in duty bound to say, albeit with the profoundest respect, that they have, *none of them*, any application to the *facts* of the cases at bar. The result of our examination of each of the cases cited has been that if in any one of them *actual* fraud was charged and *proved*, as in the cases at bar, the bill was not dismissed on the ground of *laches*. In most of them there was failure to prove the allegations of the bill. In others the bills were either defective for want of parties or the cases did not involve actual fraud; some of them not even constructive fraud; in others the claims were the stalest of stale claims or bold attempts to make a party pay twice for the same property or cases against *bona fide* purchasers, etc. The excellent *rhetoric* of the learned judges on the subject of laches, however it may commend itself to us in the abstract, was plainly, in most of the cases, *obiter*, for most of the bills might well have been dismissed for failure of proof or upon other grounds; but as we have seen there *are* cases in the Supreme Court reports having a direct application to the case at bar. Many of these we have already cited, but here is one which we have not yet noticed, although it is almost the counterpart of the case at bar in its facts and law.

In Meador *vs.* Norton, 11 Wall., 442, there were three sisters who were the owners of land in California under a Spanish grant approved in 1840. One José Bolcoff was the attorney of the sisters [as McIntire was in these cases] and represented them in obtaining the grant. It was charged in a bill filed about 1865 (twenty-five years afterwards) by the grantees of the sisters against the grantees of Bolcoff that Bolcoff, shortly after the grant to his clients, by *erasures* of names in papers, the suppression of others, and the *forging* of others [all of which we have abundantly shown McIntire

to have done], had acquired an apparent title to the land or a portion of it. The court below held, as stated in the report of the case by the Supreme Court reporter, "that the documents upon which the claim of Bolcoff was founded were *all false and were fabricated by Bolcoff*, or some one at his instigation [as must be found of McIntire in this case], to defraud the sisters of their property and secure the title to himself;" that by the false and fabricated documents and the suppression or destruction of the grant to the sisters a confirmation of the claim under the alleged grant to Bolcoff was obtained and the legal title secured to his children, when, in truth, the real title was in the three sisters and should have been adjudged to them; and it held that under these circumstances the patentees *and all persons holding under them with notice* of the claim of the sisters should be decreed to surrender the title. [McIntire is alive and in court—not dead, as Bolcoff was.]

The defenses in this court were, among others:

1st. That the claim was stale and barred by limitations.

2d. That the defendants were *bona fide* purchasers of some portions of the property for a valuable consideration without notice of the claim of the sisters, and for the other portions had conveyances or releases from them.

This court held that the charges of fraud in the bill were fully proved; that, as to Bolcoff's title, "all or nearly all of the title papers introduced to support that title were forged and fraudulent, showing to the entire satisfaction of the *court that the equity of the case was in the three sisters*," and that the defense of laches could not prevail *when the relief sought is grounded on a charge of secret fraud*, and it appears that the suit was commenced within a reasonable time after the evidence of the fraud was discovered.

A stronger case or one more applicable as to the law and the facts could hardly be presented, but here is another:

Hallet *vs.* Collins, 10 How., 174–186, was a bill filed about in 1845 (the decree below was entered in 1847) to set aside a deed obtained by fraud in 1830. The court described the manner of the fraud thus:

"He persuades them to release their title to William Kitchen for the sum of one thousand dollars, a sum which to young men just out of their apprenticeship, poor and ignorant of their rights, would appear large and attractive. Kennedy is well acquainted with the nature and value of their claim; they are wholly ignorant of it. He informs them that their claim is worthless, but that Kitchen is willing to give them this sum for the sake of peace and quieting his title. Besides, he had so complicated and covered up the title that it was impossible that they could comprehend it or know the value of their claim if the documents had been laid before them."

That was a fraud which sinks into insignificance beside the forged deeds and fictitious vendees of the case at bar, and yet here is what the court said of it:

"Under such circumstances *should a chancellor hesitate* in setting aside the releases?"

Norris *vs.* Hagan, 136 U. S., 386, is the only case in the Supreme Court reports which we have been able to find which even *seems* (though at first glance only) to be in some conflict with the doctrine laid down by Judge Story in Michoud *vs.* Girot, viz., that in cases of actual fraud the bill is filed in time when filed within the lifetime of the party committing the fraud.

In that case the complainant filed his bill in 1884 alleging an actual fraud committed against him by his two attorneys in 1859, *twenty-five years* previously, and that he had only discovered the frauds within a short time before commencing his suit. The case was heard on demurrer to the bill, and the court found that "there are many things about the bill which are *peculiar* and calculated to throw *suspicion* on the claim." It also found that the statement that the

complainant had only come to a knowledge of the alleged fraud within a short time of the filing of the bill was shown by the statements in the bill itself *to be false*, and that he had known of the alleged fraud for over fifteen years, and that a number of other matters alleged in the bill and amended bill were shown by other contradictory statements to be false, and thereby the whole claim was rendered suspicious; that there were "ambiguities" in the bill, etc. Taking the whole case as stated by the complainant himself, the court thought that the bill had properly been dismissed by the court below. It is easy to see that the court doubted the truth of the complainant's ambiguous and suspicious statements and on his own showing decided against him, which it might well have done without using the delay of *twenty-five* years as a make-weight to topple the scale against him.

This concludes our presentation of what we conceive to be the law controlling this case, so far as it refers to the question of laches. It still remains our duty, however, to consider specifically, so far as they apply generally to these cases, some errors which Mr. Justice Hagner has fallen into in his opinion printed in the record. Were not Mr. Justice Hagner's opinion printed in the record, this part of our task would have been dispensed with. But our duty to our client would not be fully performed if we allowed some of the remarkable propositions of that learned judge to stand unchallenged before this court.

First. It is said (Rec., 477), among other things, that as far back as 1887, which was a little over two years before the filing of these bills, a suit, No. 10745, equity, was begun in the supreme court of the District of Columbia against E. A. McIntire by his nephew (the Wm. E. McIntire suit heretofore noted) in which it was alleged that Emma Taylor was a myth, and, while his honor does not say it in so many words, the inference from his statement is that we are chargeable with culpable negligence in not sooner obtain-

ing information which was for the first time made public by the filing of this suit in 1887. That is to say, that instead of discovering as we did, in 1889, the existence of this suit and the charges therein contained, we should have discovered it *immediately*, or at least in less time than two years and a half. In the first place, a suit brought two years and a half after the obtaining of information leading to a discovery of the fraud can hardly be said to be such an unreasonable delay as would impute laches. But, putting that aside, we concede that the land records of deeds *affecting one's own property* are constructive notice of the contents of those deeds; but we will never concede until this court says so that a man, much less an unlettered colored washwoman, is chargeable with knowledge of the existence of a lawsuit and the allegations therein in respect of a piece of property in no way connected with her own? Such *cannot* be the law. Therefore there was no laches in Mrs. Pryor failing to know of the allegations in a suit which did not affect her or her property. Nay, even if it had concerned her property and had been a direct attack upon her title, unless *personal service* were had upon her she would not be chargeable with even constructive knowledge of its existence.

It seems, also, from the opinion of Mr. Justice Hagner that we ought to have known that Martha McIntire was claiming this property notwithstanding the fact that she did not record her deed until October, 1886, and within less than *four* years after that we brought this suit against her.

Another criticism made by Mr. Justice Hagner is that there is no charge that the amount realized from the foreclosure sale was insufficient (Rec., 475). The answer is that it was unnecessary to charge this in the bill, because no relief was sought or indeed could have been had after this lapse of time upon the ground that the property did not bring an adequate price. The proof that it was worth from $1,800 to $2,400 was offered as a circumstance going to show, among

other things, the falsity of McIntire's explanation that the erased name in the deed of the Pryors to Martha McIntire was David McIntire, since that explanation places David, an admitted speculator in real estate, in the attitude of refusing for $450, or thereabouts, a piece of property worth upwards of $2,000. It is a knowledge by the court of the real value of this property which discredits a great deal of the defendant's testimony and gives to that of the plaintiffs a much greater force, and for that reason only the testimony was offered. Furthermore, how could we charge that the property was not struck off for enough when we allege *that we bought the property ourselves!—i. e.*, that it was struck off to Mrs. Pryor's husband under an arrangement with McIntire?

Next his honor says (Rec., 465) that Pryor and wife stood by and saw the property improved by Martha McIntire without objection. The court in this observation plainly overlooked the testimony of the builder, Medford (Rec., 48), and of Mrs. Pryor herself (Rec., 23), both of whom testify without contradiction that she protested to the builder; but it was not necessary for her to protest if Martha McIntire knew, as we have shown she did, through her brother, her admitted agent, that her title was fraudulent.

Again, his honor says "the *due execution* [by Jenison] of his deed to E. A. McIntire, recorded in July, 1881, and of that to Emma Taylor, recorded in April, 1882, * * * is not disputed" (Rec., 476). We respectfully submit that all through the case the evidence shows that we contested, as strongly as we knew how, the claim that these deeds were "duly executed." How could a deed to secure a fictitious person, and another deed in which that fiction is named as grantee, be "duly executed"? They were nullities. To say that we did not dispute them is to say that we abandoned our case. In like manner, on the same page (Rec., 476), his honor goes on to say: "It is not *denied* that in May, 1881, before the [foreclosure] sale Pryor and wife had under-

taken to convey the property to Martha McIntire in consideration of $5.00 and the assumption by her of the liens on the property by deed duly executed and acknowledged, which Martha refused to accept." Surely the learned judge had entirely forgotten the evidence and the contention of plaintiff's counsel as to this deed when he says "the execution of this deed is not denied." Her counsel tried to make that denial, both in the testimony and in their argument, as emphatic as it was possible to make it. Not only did Mrs. Pryor positively deny that she executed such a deed, but a great deal of time was devoted to it by the testimony of the experts McLellan (Rec., 93) and Hay (Rec., 783). We proved it to be a spoliated paper. Our cross-examination of the McIntires showed also how much we disputed the genuineness of the paper. Indeed, if there was one claim which we combatted more than we did the claim that this deed was genuine we are not aware of it.

The remarkable failure of his honor to recollect the facts of the case before him is again illustrated in a still more curious misstatement of fact (Rec., 497). His honor is endeavoring to show what he conceives to be the improbability of the plaintiff's contention that the property was knocked down at the foreclosure sale to Thomas Pryor, a matter which, as we have shown, is "a mere pin among the crowbars" of this case, for it is utterly immaterial whether the property was knocked down to him or to Jenison. But the learned judge proceeds to pick up this pin and dispose of the plaintiff's contention by reviewing the evidence in this way:

"Among the witnesses who remember that so many years ago they heard the proclamation of a purchaser who had not a cent in the world to pay for what he bought *are some negro girls* who were children of 7 or 9 years of age at the time of the sale. The common experience of individuals is to be applied in judging of the value of such statements, and to me it seems most improbable, supposing any *negro girls* of such ages had been present at a sale of land within

the last month, that one in a dozen of them could be found today to tell what the same was about or to give a reliable account of anything that did occur."

Now, when we refer to the record we find that there were just five witnesses as to the property being struck off to Pryor; four of them, Ragan, Holliday, Johnson, and Jacobs, the record shows to have been *grown men*, and the other witness was Mrs. Pryor herself. So far, therefore, from "some negro girls" testifying upon that subject, no negro girls were witnesses in the case at all! They are as fictitious as "Emma Taylor" herself. There are quite a number of other instances of similar errors of fact into which the learned judge stumbled which appear in the other cases.

Again, the learned judge conceived (Rec., 496) the plaintiff's contention to be that McIntire was really serious in his proposition to Pryor that he should bid in the property and pay for it in notes or in instalments, and says, "McIntire was under no necessity to make so stupid an arrangement." We have already said that counsel did not contend in the court below, nor do they contend here, that McIntire for one moment intended to carry out "so stupid an arrangement." We must recollect, however, that he was dealing with an unlettered colored man—a wood-sawyer, whitewasher, and doer of odd jobs; a man who was so stupid as to permit a foreclosure sale of property worth at least $2,000 for a debt of $450 when he could easily have borrowed three times that much upon it and paid off the debt. Such a man was a mere puppet in McIntire's hands. It was no trouble to him to satisfy Pryor's mind that no harm would come to him by such a sale, and so Pryor, who, he says, regarded him as a friend in need, believed him in earnest when he suggested this "stupid arrangement." The poor wood-sawyer did not think it stupid; he had not the capacity to judge either of its legality or feasibility; it was sufficient for him to know that "Mr.

McIntire" was going to befriend him as much as lay in his power and save his wife's property, and so the lamb was led to the slaughter. This was what we contended and still contend. It was easy enough, as we have shown, for McIntire to have it understood that old man Pryor was "bidding in" the property, and so keep off other bidders. Easy enough to have it knocked down to him and then afterwards make a deed to Jenison, and easy enough at the same time to keep poor old Pryor in total ignorance of his duplicity.

But why dwell upon this feature of the case, since, as we have said, it is not necessary to grant the relief on the ground that the property was knocked down to Pryor. The equity of the bill grows out of the systematic and successful fraud practiced by the recreant trustee upon both Pryor and Jenison, whereby he manipulated this property to his own uses and eventually got the apparent title in himself under the cloak of his sister Martha. Our position—and, though we strove hard to impress it upon the learned judge, it seems to have been entirely lost sight of—was that the only honest defendant in the case was Jenison, the other defendants, Martha and E. A. McIntire, having shown no interest whatever in the property which the court could recognize. We said and still say that the property belonged either to Pryor or to Jenison. Pryor claims that it belongs to her. Jenison says, "No matter whether it belongs to me or to you, you may have it so far as I am concerned if you will pay the debt which was secured upon it and for which the foreclosure sale was made." In other words, he consents to the sale being set aside and to Mrs. Pryor being reinstated in her title provided she pays this debt, and this she tenders herself ready to do. To the entering of a decree to this effect we insisted, and still insist, Martha McIntire cannot successfully object unless she shows herself to be a *bona fide* purchaser for value from Jenison without notice of her brother's frauds. If the court believes her such and rejects the proof that "Emma Taylor" is a fiction, of course

we have no case; but while we bow in loyal submission to a finding of fact, however contrary it may be in our opinion to the evidence, we do respectfully protest against the position taken by us being misconceived and a decision rendered against our client on a case she is not presenting.

Another reason given by Mr. Justice Hagner for his decision in the Pryor case is, we respectfully submit, a strong point in her favor. It is said (Rec., 496) that Mrs. Pryor had sworn in her original bill that Jenison had "informed her he did not know the property had been sold under the trust or conveyed to him or that it stood in his name, and that he had received no consideration whatever for the execution of the deed to Emma Taylor." For swearing that she had thus been informed the court, referring to the accusations of perjury made by complainant's counsel against the McIntires, intimates that "the tables might have been turned" against Mrs. Pryor, for, said his honor, "it cannot be contended that this statement is true." This is a serious charge. Let us see if it be well founded. It will be observed that Mrs. Pryor's statement is that she was *informed* by Jenison of certain facts. If she was not so informed by Jenison, then she has sworn falsely; otherwise the intimation that she has perjured herself falls to the ground. Referring to Jenison's testimony (Rec., 36), it will be seen that he says he had been called upon for information by Mrs. Pryor's counsel *before* the filing of the bill. He also says that *after* the bill was filed McIntire called upon him and told him (Rec., 40) "that the statements embraced in the bill were quite at variance with some of the facts;" that thereupon he went to McIntire's office and was shown by him the signed order authorizing the sale; whereupon, on seeing this paper with his name signed to it, he was convinced that he had directed the sale to be made, but he distinctly says (Rec., 45) that until it was shown him "I should not have supposed that I *executed* the paper" (Rec., 45)—*i. e.*, that he had directed a foreclosure of the trust—so that when he first

gave information about these matters to Mrs. Pryor's counsel he, of course, was of the *belief* that the foreclosure had been made *without his authority*. Then he says that after the bill was filed (which contained the statement that plaintiff had been *informed* by Jenison that the sale had been made without his authority) he had *another* interview with Mrs. Pryor's counsel, his memory having been in the meantime refreshed by the exhibition to him by McIntire of the signed order, and that in consequence of that interview he was told by plaintiff's counsel that the bill would be amended before he (Jenison) put in his answer. Now, when we refer to the amended bill we find the statement that the sale had been made without Jenison's direction *stricken out*.

As to the averment in the bill that Jenison received no consideration for the deed executed by him to Emma Taylor we respectfully submit that it is *absolutely* correct. We have shown that the $100 was not received by Jenison as a consideration for executing the deed, and, moreover, that the money paid him was *his own* and not McIntire's.

So that, instead of the intimation of perjury against Mrs. Pryor being sustained, the very fact that she immediately amended her bill so as to correct a statement resulting from a lapse of memory in her informant should go to strengthen her credibility rather than to impugn it; but the circumstance of this amendment is a still stronger proof that *laches* cannot be charged to Mrs. Pryor. Being put upon inquiry by the knowledge obtained by her counsel of the charges made by McIntire's nephew as to the fictitiousness of "Emma Taylor," she at once through them proceeds to investigate. The evidence shows that the facts were diligently sought by her counsel from Jenison, and that Jenison, himself being misled, misinformed them, thus showing that, though she endeavored to obtain through reasonably intelligent and diligent counsel the exact facts, she was unable to do so, and yet it is said she is guilty of laches in not being wiser than both her counsel and Jenison!

In conclusion we submit that to allow Martha McIntire to run away with this property would be to permit a *mala fide* party to frustrate the efforts of an honest debtor and an honest creditor to do that which is fair and right between themselves, and, moreover, would be to give to this *mala fide* party a valuable piece of real estate for which she has paid absolutely nothing, for it will be seen by the auditor's report that every dollar shown by the McIntires to have been expended by them upon this property, either by way of improvements, taxes, or repairs, *has been allowed them.*

FRANKLIN H. MACKEY,
For Appellee.

APPENDIX.

STATEMENT OF THE FACTS AND THE ACTUAL DECISIONS THEREIN IN THE CASES CITED BY MR. JUSTICE HAGNER IN THE M'INTIRE CASES.

We beg leave to submit to the careful attention of the court this result of our examination of the above cases. If the court will do us the honor to follow us in our examination of them, it will find that *not a single one* of the twenty-two cases cited shows *actual fraud* found. On the contrary, in almost every case the bill could have been dismissed (and in many of them such was the acutal decision) on other grounds than laches. In every case the court found either that the fraud charged was not proved or if proved was merely a case of *constructive* fraud.

On the other hand, we have already shown to the court numerous cases of actual fraud by trustees, where the court, having, as it was bound to do, considered the evidence in support of the charge of fraud, found the charge sustained, and thereupon rejected the defendant's plea of laches.

We state with the utmost confidence that we believe *no* case can be found in the Supreme Court reports in which the bill was dismissed on the ground of laches where *actual* fraud was charged against a trustee of real estate and the bill was filed within twenty years of the discovery of the fraud. If there be such a case, we do not know of it, and we deem it the duty of defendant's counsel to refer us to it if there be such. We now proceed to examine the cases cited by the court below :

1. McKnight *vs.* Taylor, 1 How., 161–167. In this case a deed of real estate was made in 1813 upon trust to pay certain creditors if by the 16th of April, 1818, they should

not have been otherwise paid. The bill was filed in 1837 by *a single one* of all the numerous creditors who had been originally secured, a fact which the court comments on as throwing *doubt* upon the plaintiff's claim. *No fraud of any kind* was charged. The owner of the land claimed that the debt had been paid, and the Court seemed to incline to the same opinion.

Chief Justice Taney, delivering the opinion, said:

"In relation to this claim, it appears that *nineteen years and three months* were suffered to elapse before any application was made for the execution of the trust by which it had been secured. No reason is assigned for this delay, nor is it alleged to have been occasioned in any degree by obstacles thrown in the way by the appellant. As the record stands, it would seem to have been the result of mere negligence and laches. The original creditors were in business ten years after the deed was made and five years after the expiration of the credit which it gave to McKnight and Stewart, and, as they became insolvent in 1823, it must be presumed that in the last-mentioned period they were themselves pressed for money. The property is situated in the town of Alexandria, where the laws of Virginia have been adopted by Congress, and the trustee, under these laws, *had an undoubted right to sell*, upon the application of any creditor, as soon as default was made without asking the interposition of the court of chancery. Such delay under such circumstances by the original creditors, followed *by fourteen years' more* by the assignees who afterwards had charge of this claim, can, perhaps, hardly be accounted for without supposing that *this debt had been nearly, if not altogether, satisfied* in the manner suggested in the answer of the appellant. If, indeed, the suit had been postponed a few months longer, twenty years would have expired, and in that case, according to the whole current of authorities, the debts in the schedule would all have been presumed to be paid."

Without reference to the delay, this cause might well have been dismissed on the merits for lack of evidence.

2. In Badger *vs.* Badger, 2 Wall., 87–93, the court says of the case before it that it had "none of the peculiar charac-

teristics of those cases *where the successful fraud of a trustee only made an aggravation of the offense.*"

"For more than *twenty-five* years the widow and heirs have acquiesced in this sale, and it is more than thirty since the administration account was settled, which is alleged to have been fraudulent. The guardian of the complainant, who approved the account, is dead. The widow died in 1855. Two of the heirs were of full age in 1831 and the others afterwards. This bill was filed in 1850. The bill does not state the age of complainant at the time of filing his bill. He must have been over forty years of age. The whole transaction was public and well known to the widow and the heirs and their guardians. The purchase of the estate by the administrator could have been avoided at once if any party interested disapproved it. There was not and could not be any concealment of the facts of the case—that complainant claims as assignee of his elder brothers and sisters and uses them as witnesses to prove the alleged fraud *after a silence of over thirty years.* They attempt to prove the signature of their mother to the documents on file in the court to be forged, and this after the death of the mother, who lived for twenty-eight years after the transaction without complaint or allegation either that her signature was fraudulently obtained or forged. A daughter, who was twenty-three years of age when this sale was made and had full knowledge of the whole transaction, after near thirty years' silence, now comes forward to prove that her concurrence and assent was obtained by fraud, and now, after the death of the guardian and the mother, who could have explained the whole transaction, the aid of a court of chancery is demanded to destroy a title obtained by judicial sale after the parties complaining, with full knowledge of their rights, have slept upon them for over a quarter of a century."

So it appears that this was a case of *acquiescence* and not of laches, the distinction between which is well recognized by the courts.

3. Stearns *vs.* Page, 7 How., 819. This case related to personalty, the analogous statutory bar being six years.

The court itself states the facts and its reasons for finding laches, reasons that commend themselves to every lawyer.

After premising that the charges of fraud were vague and that *no fraud, misrepresentations, or concealment* had been practiced by the defendant and "made palpable to the court," such as would justify the account to be opened and taken *de novo*, the court says:

"In this case the complainant seeks to open an account stated and settled twenty-six years before the filing of his bill, and this account not rendered by the defendant to a woman unacquainted with business and received by her without examination, but stated from the books by referees or arbitrators chosen for the purpose, and in the nature of an award between the parties, executed and *acquiesced* in by both without complaint for a quarter of a century."

Moreover, the accountant was dead, and had been for more than twelve years. Of course the bill was dismissed, and properly so.

4. Hoyt *vs.* Sprague, 103 U. S., 613. The subject-matter in controversy in this case was personalty—stocks and bonds, etc. It was not a case of laches at all, but of *consent and acquiescence*, with abundant knowledge for over ten years, and so found by the court. During all that time they had taken the benefit of the transaction complained of—received dividends, etc. Furthermore, so far from finding fraud, the court found that the party complained of was "actuated by the *most worthy motives*," and said:

"Without further discussion, it suffices to say that the complainants came into court too late for relief, *even if when they came of age they could have justly complained of the conversion* of their property into the stock of the corporation."

5. In Hammond *vs.* Hopkins, 143 U. S., 225, the court found as matter of fact that there was *no fraud* whatever, but that the party complained of acted from pure motives and during all the time had in good faith believed he was

honestly the owner of the property. The delay to complain was within a month or two of twenty years, when the statutory bar would have been complete.

6. In Galliher *vs.* Caldwell, 145 U. S., 369, *no fraud was charged*, and the court said, aside from the question of laches, it was exceedingly doubtful whether the plaintiff had a superior equity to the defendant's legal title.

7. In Foster *vs.* Mansfield, 146 U. S., 89, the bill was filed ten years after a foreclosure sale to set it aside. The court held, 1st, that the alleged acts of collusion and fraud were *patent on the face of the proceedings;* 2d, that even if the sale were set aside it did not appear (the property being incumbered) that it would result *in any benefit to the complainant, and a court of equity is not called upon to do a vain thing.* So that the bill would have been dismissed if it had been filed the day after the sale. Laches had nothing to do with it, and the equity was clearly with the defendant.

8. Johnston *vs.* Standard Mining Co., 148 U. S., 370. The court seemed to be of the opinion that the plaintiff had *consented* to the formation of the corporation and of the transfer to it of the mine, in which case, said the court, "he clearly waived his right." There was also, said the court, "a circumstance proper to be considered as bearing on the equities of this defense, viz., "that at the time of the institution of this suit a large proportion, if not a majority, of the stock of this company" had passed into the hands of another company, "one-half, if not a majority, of the stockholders of which were *bona fide purchasers for value without notice.*" In addition to this, the property was mining property which, at the time the cause of action arose, was worth about $4,800, while at the time of bringing suit it was worth *over a million dollars*, "developed by the courage and energy and at the expense of the defendants." The court also found many

other circumstances which were against the merits of the case itself without reference to the delay in bringing suit, and, lastly, there was "*no clear proof of fraud.*" In conclusion the court quoted from Twin Lick Oil Co. *vs.* Marbury as to the fluctuating value of mining property and the injustice of permitting one holding the right to assert an ownership in such property "to voluntarily await the event and then decide, *when the danger, which is over, has been at the risk of another,* to come in and share the profits." The case was really one which could have been dismissed upon the merits or upon the doctrine of estoppel without reference to the delay in bringing suit, but the whole case is utterly unlike those at bar and cannot be used as a precedent for the court's action here. The fact is it often happens, whenever a suit without merit is brought after long delay and the plaintiff, as a matter of course, fails in his proof, judges, while commenting upon the failure of proof, which of itself is sufficient ground to dismiss the bill, very naturally, yet unjudicially, lapse into an expatiation upon the law of stale claims and laches, which, although it may be very sound doctrine, is nevertheless *obiter* in the case itself. Mr. Ram, in his excellent work upon Legal Judgment, comments upon this practice of judges, after having decided a case, straying off to express opinions not necessary to be expressed. It is equally as objectionable when other judges cite these obiter expressions as judicial authorities upon which to base their decisions, when in point of fact they are but the mere rhetoric of the case.

9. In Lane & Bodley Co. *vs.* Locke, 150 U. S., 193, a case of *personalty*, Locke, while in the employ of L. & B. and using their tools and patterns, invented a stop-valve in 1872. Until he went out of the employ of L. & B., in 1884, he permitted them to use his patent without claim for remuneration. After leaving their employ he filed his bill. The case, said the court, was fairly brought within the doctrine

of those cases which declare that where an employé assents to the use by his employer of his invention the court is warranted in finding he has so far "recognized the obligations of service flowing from his employment as to have given to such employer an irrevocable license to use his invention," and it was upon this ground and not laches that the bill was dismissed.

10. In Harwood *vs.* Railroad Co., 17 Wall., 80, a bill was filed five years after a completed judicial sale to set it aside as fraudulent. The bill was dismissed *not* on the ground of laches, but *because of want of proper parties to the suit.* Incidentally the court spoke of the delay, saying that it was fairly to be inferred that during all the time the plaintiffs had knowledge of the proceedings as they progressed, &c., &c.

11. Twin Lick Oil Co. *vs.* Marbury, 91 U. S., 587. In this case the court said that "there was no *actual* fraud." It also expressed its doubt as to the sale being invalid, as was claimed by the plaintiff. "The doctrine," it said, "is well settled that the option to avoid such a sale, viz., an invalid sale of mining property, must be exercised within a reasonable time," the property being mining property and of fluctuating value. It, said the court, must hold to the principle [clearly the principle of estoppel] "that no delay for the purpose of enabling the defrauded party to speculate upon the chances which the future may give him of deciding profitably to himself whether he will abide by his bargain or rescind it is allowed in a court of equity." That the plaintiffs had fairly shown themselves to be *estopped* by their conduct is evident from the language of the opinion, and that that was the reason for the decision is still further evident from the following language: "*As there was no actual fraud*, they knew all the facts on which their right to avoid the contract depended. They not only refused to join the defendant in the purchase when the privilege was tendered

them, but they generally refused to pay assessments on their shares already made *which might have paid the debt.*" Laches had nothing whatever to do with the *decision*, and therefore the case cannot be cited as an authority upon that question, unless obiter and fine rhetoric is authority.

12. Brown *vs.* Buena Vista, 95 U. S., 157, a case of *personalty.* The complainant filed his bill to set aside a judgment upon the ground of fraud. The bill was filed some five years after the judgment was obtained, and though the court found there was "some" fraud by *other persons* in obtaining the judgment, yet it acquitted *the two defendants* "of anything wrong." The case seems to have turned somewhat upon the well-known reluctance of a court of equity to disturb judgments at law when with proper diligence the defense could have been availed of in the proceeding itself, and also because courts of equity more readily apply the doctrine of laches and delay where it is sought to open a judgment of long standing than it will in almost any other case. The defendant in the case was a municipality, not a widow and orphans and ignorant colored persons imposed upon by the misrepresentations of their trustee. There was nothing in it of those well-known equities which appeal so strongly to courts of equity, such as there is in the cases at bar.

13. Hayward *vs.* Nat'l Bank, 96 U. S., 611. This case also relates to *personalty.* The court decided, first, that it had *no jurisdiction* to grant the relief prayed for, even if the facts charged had been proved. It held, however, that they had not only *not been proved*, but that the defendant bank was clearly justified in its action (foreclosing securities) and the case of the plaintiff was entirely without merit, and, finally, even if the bank had originally acted without authority the plaintiff had *elected* to abide by the sale and could not recall that election merely because the stock had

largely risen in value. Although the court laid down some of the general principles of the doctrine of laches, it is perfectly clear that the case was not decided upon that ground at all.

14. Davidson *vs.* Davis, 125 U. S., 90, still another case of *personalty*. It is as utterly unlike the cases at bar as it it possible to conceive. Briefly stated, one of the parties had made a conditional sale of certain securities, and, claiming that he was entitled to the return of them, filed his bill some five years after he had failed to perform the condition which would have entitled him to a return of the stock. The court held, first, that even if he had any rights in the matter the frame of his bill prevented any relief being granted; secondly, that he had lost them (if ever he had any) by delay and laches, and, thirdly, that even if his bill had been properly framed to give the relief asked and there had been no laches he could not get the relief, because, the sale having been upon condition and the condition not having been performed, the sale had become an absolute one. What relation such a case has to the facts of the cases at bar it is difficult to comprehend.

15. Holgate *vs.* Eaton, 116 U. S., 33, was a bill for specific performance, which we know is not a claim of right, but rests in the sound *discretion* of the court. The facts were that a husband had agreed to sell the land of his wife; the purchaser prepared the deed and sent it to him for his and his wife's signatures. The wife for more than two years constantly refused, although repeatedly asked to do so, to sign the deed. Suddenly the land fell greatly in value; so that at the price stated in the deed the wife would have received a sum largely in excess of the depreciated value of the land. Under these circumstances she naturally changed her mind and concluded to sign the deed. The proposed purchaser, however, now refused to buy, and the wife accordingly brought suit for specific performance. The court held that

even if the contract was one for specific performance the complainant by her fast and loose conduct had forfeited her rights to such relief. The question of laches had no application whatever to the case. It was decided solely upon the want of "merit" in the complainant's case, as shown by the facts.

16. Societé Fonciéré *vs.* Milliken, 135 U. S., 304, a case of *personalty*. The bill was filed to set aside a judgment for usury two years after the rendition of the judgment. The plaintiff had notice of the judgment. The known unwillingness of courts of equity to set aside judgments obtained at law with notice upon slight grounds and after any considerable period is well known, and if there is any delay excuse must be shown. No excuse was given here for the delay, and the court said of the bill, "Conceding the large amount of the judgment to be just, it attacks only an inconsiderable portion;" and in speaking of the sale under the judgment the court further said, "*No distinct act of wrong is charged * * * and no fact is stated from which the court can deduce misconduct.*" It is needless to say that there is no possible likeness in the case to the cases at bar.

17. Clabaugh *vs.* Byerly, VII Gill, 354. The court doubted exceedingly the merits of plaintiff's case, and said: "*If* there was an equity, he seems to have lost it by delaying for such a length of time to make it known. The deed which he alleges to be fraudulent was executed and recorded 2d September, 1842. The appellee does not pretend that he was ignorant of its existence or of any of its provisions, yet with a knowledge of this deed he pays the money, although it does not appear that he was under any legal obligation to pay it, and never seems to have complained of the deed to the appellant until he filed his bill of complaint, on the 22d of February, 1844." It is plain that the court felt that even on the merits the bill should be dismissed.

18. White *vs.* White, 1 Md. Chanc. Dec., 53, a case of *personalty.* The court said it could not see that the "plaintiffs have any case against this defendant, John C. White, *upon the merits.* * * * He paid it [the money] to the person by whom he was employed to sell the stock without notice of the trust or any circumstance which could awaken a suspicion that the person to whom the payment was made was not entitled to receive the money. * * * To hold him liable under such a state of facts to see to the application of the money would be an extremely hard measure of justice—so hard, indeed, that I should be unwilling to adopt it without the most conclusive authority."

19. Hitch *vs.* Tenby, 6 Md., a case of *personalty,* was a bill filed to open a decree seven years after it was enrolled because, as was claimed, it was based upon a claim affected by usury. The opinion is very brief. Neither counsel nor the court allude to or use the word laches, and the word is not to be found in the whole report of the case. What the court decided is fairly stated in the syllabus, which is as follows:

"If a party, at any time after decree is enrolled and the term passed, has the right to open it because it is based on a claim affected by usury, he must do so within *nine* months by statute after the decree or within the same time after he is informed of the usury."

"When a party at the date of the decree knew of the transactions constituting the alleged usury and did not file his bill for seven years thereafter, it is too late, and his bill will be dismissed."

There might be some persons daring enough to dispute the soundness of the decision in that case, but we are certainly not of them. The decision was right, but how it can be an authority in point for the cases at bar we are unable to see.

20. Nelson *vs.* Hagerstown Bank, 27 Md., 51, was a creditors' bill, and the court was asked by the defendant to enforce a secret agreement to execute a mortgage between a nephew and his aunt for the purpose of avoiding the satisfaction of creditors. It is plain from the review of the evidence by the court that it greatly doubted the *merit* of the defense and the *proof* to sustain it. The case turned upon the effect of the recording acts and not upon laches. That was only an incidental question. The court would have decided just as it did whether laches was a good reply or not.

21. Hall *vs.* Claggett, 48 Md., 223, a case of *personalty*, the bill filed in 1856 to obtain a settlement of partnership accounts after the close of active business of the partnership, in 1842. The bill charged fraud. The court said, "*We fail to discover in the proof any grounds for the charge.*" After reviewing the case, it said: "A mass of testimony has been taken and considered by several intelligent auditors, experts at accounts. After laborious efforts to digest and simplify the same, their reports leave the matter in controversy involved in obscurity and furnish no satisfactory solution of the same *sufficiently reliable to justify a decree in chancery* especially adjudicating the questions involved."

How could a question of delay affect a case which had not been proved? Relief was refused not on account of any alleged laches, but because there was an utter failure to sustain the prayers of the bill by evidence.

22. In Amey *vs.* Cockey *et al.*, 73 Md., 297, the bill was filed on the 15th of December, 1888, by the appellant for the purpose of having vacated and declared of no effect a certain deed executed by herself and brother, James Wise, on the 20th of April, 1848, upon the ground that both she and her brother were infants under the age of twenty-one years at the time of the execution of the deed. The deed was

made to the mother of the appellant, and it was under the mother that the present appellees, as purchasers, derive their title to the premises conveyed by the deed of 20th of April, 1848. At the date of the deed just mentioned the appellant was a married woman and her husband joined in its execution. He died January 3, 1884, within a few days of five years before the bill was filed. The court dismissed the bill on the ground that to sustain the prayers of the bill would be to lend its aid in breaking up a partition after the lapse of *forty* years and after the appellant and her husband had *received and disposed of* their share of the common property and also that assigned to her brother, who shortly after the partition died intestate. This case was an attempt of the appellant to recover the *second time* for the same ground, and the chancellor says: "Fortunately the law tolerates no such injustice." The case was naked and bald of all equity, and the court would not have tolerated the bill or granted the relief prayed even if the bill had been filed much sooner than it was and laches had not been pleaded.

No. 373. 109.

Motion by appellee for certiora

OCT 26 1897
JAMES H. McKENNEY
CL

Filed Oct. 26, 1897.

Supreme Court of the United States.

No. 373.

EDWIN A. McINTIRE and MARTHA McINTIRE,
Appellants,
vs.
MARY C. PRYOR, *Appellee.*

On Appeal from the Court of Appeals of the District of Columbia.

Suggestion by appellee of a diminution of the record, and motion for a writ of certiori to bring up the omitted portions thereof.

FRANKLIN H. MACKEY,
Solicitor for Appellee.

IN THE

Supreme Court of the United States.

EDWIN A. McINTIRE and MARTHA McINTIRE, *Appellants*, *vs.* MARY C. PRYOR, *Appellee.* } No. 373.

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Suggestion by appellee of a diminution of the record, and motion for a writ of certiori to bring up the omitted portions thereof.

1. Now comes Mary C. Pryor, appellee, by Franklin H. Mackey, her solicitor, and suggesting to the court a diminution of the record as hereinafter particularized, moves the court for a writ of certiori to the Court of Appeals of the District of Columbia, directing the sending up of the hereinafter mentioned omitted portions thereof; and as grounds for this motion says that the transcript of the record as now brought into the Clerk's office of this court does not contain all of the testimony and exhibits upon which the cause was argued and submitted to, and considered by, the said Court of Appeals, but only a portion thereof, to wit, about one-half.

2. That a stipulation entered into by and between the respective parties to this cause, appears of record at folios 811–812 of said transcript in words and figures following to wit:

> "It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, Equity No. 12761; Brown *vs.* McIntire, Equity No. 12977; Ackerman *vs.* McIntire, Equity No. 12978; Southey *vs.* McIntire, Equity No. 13034, and Hayne *vs.* McIntire, Equity No. 13177, in the Supreme Court of the District of Columbia, so far as the same may be relevant to the issues raised in this case of Pryor *vs.* McIntire (Equity No. 12761) in respect of Emma Taylor, Martha McIntire or Edwin A. McIntire *may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein*, subject to all and any objections as to the materiality and competency thereof which could have been made if the same had been taken therein."

3. That the said stipulation was entered into by reason of the fact that the said five suits in equity had been brought against said E. A. McIntire and Martha McIntire to set aside certain conveyances in each of said cases on the ground of fraud, said fraud consisting in this, that the grantee in each of said conveyances was alleged to be one Emma Taylor, who was a fictitious person, and an invention of the defendants for the purpose of defrauding plaintiffs and that the subsequent deeds executed in her name to said Martha McIntire and E. A. McIntire were forgeries, and further that the alleged public sales claimed to have been made to her by said E. A. McIntire under deeds of trust to him never in fact took place, and further that said Martha McIntire the pretended purchaser of the real estate described in said deeds was a woman comparatively without means, that she paid nothing for said properties, and that she was a *mala fide* purchaser with full notice of the frauds of her brother the said E. A. McIntire.

4. By reason of the aforesaid circumstances and other allegations of like character in all of the said cases it was agreed between counsel for the respective parties that instead of repeating the examination of the witnesses in each of said five causes, their testimony as given in any one of said causes together with the exhibits filed therein might be read in each of the other causes at the hearing, as appears by the stipulation above set forth. This was done to save the great expense and outlay of time which would have been required had the said testimony been repeated in each of said five cases.

5. That accordingly on the hearing in the Supreme Court of the District of Columbia sitting in equity, and also on the appeal to the Court of Appeals of the District of Columbia, the said causes were all heard together and the testimony and exhibits in each case was taken and considered as being a part of every other of said cases including the cause of Pryor *vs.* McIntire (now in this court as McIntire *vs.* Pryor). This will appear from the opinion of the said Court of Appeals, 7 Court of Appeals, D. C., 417, Pryor *vs.* McIntire, wherein the court said :

> " This is one of a series of five cases, argued and submitted at the same time, wherein different parties have sued the same defendants to cancel certain deeds and annul certain pretended sales of land, in the District of Columbia, claimed to have been made by Edwin A. McIntire, trustee, in violation of his obligations and duties as trustee in certain express trusts, and in pursuance of a scheme to defraud the makers and grantors therein. The other cases are No. 466, Brown *vs.* McIntire *et al* ; No. 567, Ackerman *vs.* McIntire *et al*; No. 468. Southey *vs.* McIntire *et al* ; and No. 469, Hayne *et al vs.* McIntire.
>
> "*A considerable part of the testimony is common to all of the cases* and was taken in one [each] under a stipulation for its consideration in all."

And appellee further represents that the testimony in the other cases having been so as aforesaid considered by the court

under the said stipulation of counsel, and the court having arrived at its conclusion and made its decree in this case on a consideration of all of said testimony and exhibits so as aforesaid taken and filed in all of said five cases, this court cannot properly consider this case of McIntire *vs.* Pryor unless the testimony and exhibits in the other four cases are also before it, for to do otherwise would be to decide the case with the absence of a great deal of material and relevant testimony not before it but which however was before the court below and which entered into and controlled its judgment in the final disposition of this case.

And appellee further represents that the presence in this case of said testimony and exhibits, as found in said four cases, is necessary to a full and fair hearing of this case, the said testimony and exhibits consisting of the forged deeds and the evidence in respect thereof and the evidence of other frauds of like character committed at or about the same time in respect of like trust properties all bearing upon the question whether said alleged fictitious person, Emma Taylor, was really a fictitious person or not, and whether said E. A. McIntire and Martha McIntire are guilty of the frauds charged against them in the case at bar. That this court and other courts have frequently decided that such evidence is admissible. Thus in the case of Lincoln *vs.* Claflin, 7 Wall, 138, this court has said:

> "Where fraud in the purchase and sale of property is in issue, evidence of *other fraud of like character* committed by the same parties *at or near the same time* is admissible. Its admissibility is placed on the ground that where transactions of a similar character executed by the same parties are closely connected in time the inference is reasonable that they proceed from the same motive."

And to the same effect is the language of this court in Castle *vs.* Bullard, 23 Howard, p. 186, where it was said:

> "Decided cases have established the doctrine that *cases of fraud* like the present are among the well recognized exceptions to the general rule that other wrongful acts of the defendant are not admissible in evidence on the trial of the particular charge immediately involved in the issue. *Similar fraudulent acts are admissible in cases of this description if committed at or about the same time*, and when the *same motive may reasonably be supposed to exist*, with a view to establish the intent of the defendant *in respect to the matters charged against him.*"

Again, the evidence in these other cases being relevant to this case, would have been taken and filed in this case but for the stipulation (above set forth) that the said testimony as taken in the other cases might be read on the hearing *as if it were taken in this case.* Much of the evidence in those cases is of a *circumstantial character* directly bearing upon the fraud alleged in this case and is the very kind of evidence usually resorted to to establish fraud. Said this court in the above cited case of Castle *vs.* Bullard:

> "Much of the evidence was of a circumstantial character, and it is not going too far to say that some of the circumstances adduced if taken separately might well have been excluded. Actions of this description, however, where fraud is the essence of the charge, *necessarily give rise to a wide range of investigation*, for the reason that the *intent* of the defendant is more or less involved in the issue * * * * Whenever the necessity arises for a resort to circumstantial evidence, *either from the nature of the inquiry or the failure of direct proof, objections to the testimony on the ground of irrelevancy are not favored* for the reason that the force and effect of circumstantial facts usually and almost necessarily depend *upon their connection with each other.*"

For the foregoing reasons the court below having considered all the circumstantial evidence found in said four cases, as by the stipulation of counsel, it had a right to do, came to the conclusion that said E. A. McIntire and Martha McIntire were

guilty of fraud in the transaction complained of in the case at bar, and as to the said alleged Emma Taylor it found that:

> "There is no such personage as the Emma Taylor who figures in the transactions of this and the other cases as grantee and grantor in certain deeds and instruments of writing. *She is an invention of Edwin A. McIntire.*" Pryor *vs.* McIntire, 7 Ct. of Appeals D. C., 425.

From these conclusions and the consequent decree in this cause declaring said deeds null and void the said Edwin A. and Martha McIntire have appealed to this court and now ask that the decree of the Court of Appeals be reviewed and reversed. They have not, however, appealed the other cases and therefore the record in those cases is not before this court. Yet it is manifestly necessary that before this court should consider this case it should have before it the same evidence *and all of it* which was before the court below and upon which its conclusions were made up and declared, to wit; the evidence and exhibits which includes the bills and answers in all five of the cases.

Wherefore, in consideration of the premises, appellee, by the advice of, and through her solicitor, now suggests the diminution of the record by the omission from said record of the testimony and exhibits contained in said four cases of Brown *vs.* McIntire *et al*, No. 466; Ackerman *vs.* McIntire *et al*, No. 567; Southey *vs.* McIntire *et al*, No. 468, and Hayne *vs.* McIntire, No. 469. The said numbers being the numbers of said cases upon the docket of the Court of Appeals of the District of Columbia and moves this court for a writ of certiori directed to said Court of Appeals directing the sending up to this court at the cost of the appellant a transcript of the record in said four cases.

And your petitioner will ever pray, etc.

FRANKLIN H. MACKEY,
Solicitor for Appellee.

FRANKLIN H. MACKEY, being duly sworn deposes and says that he is the solicitor of record for the appellee, Mary C. Pryor; that he knows the contents of the foregoing petition and motion for a writ of certiori and that the facts stated therein upon his personal knowledge are true and those stated upon information and belief he believes to be true.

FRANKLIN H. MACKEY.

Subscribed and sworn to before me this 25th day of October A. D. 1897.
A. Eddleman
Notary Public D. C.

IN THE

SUPREME COURT OF THE UNITED STATES.

EDWIN A. McINTIRE and MARTHA McINTIRE, *Appellants*, *vs.* MARY C. PRYOR, *Appellee.* } No. 373.

To ENOCH TOTTEN, ESQ.,
Solicitor for Appellants.

Sir:—You will please take notice that on Monday, the 1st day of November, 1897, at the opening of the court or as soon thereafter as counsel can be heard, a motion of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of said court therein.

FRANKLIN H. MACKEY,
Solicitor for Appellee.

Service of the within motion and notice is hereby acknowledged this 26th day of October, A. D. 1897.

ENOCH TOTTEN,
Solicitor for Appellants.

No. 373. 109.

Motion for certiorari.

Filed Nov 8, 1897.

FILED
NOV 8 1897
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

No. 373.

EDWIN A. McINTIRE and MARTHA McINTIRE,
Appellants,
vs.
MARY C. PRYOR, *Appellee.*

On Appeal from the Court of Appeals of the District of Columbia.

Suggestion by appellee of a diminution of the record, and motion for an order upon the appellants requiring them to bring up the omitted portions thereof.

FRANKLIN H. MACKEY,
Solicitor for Appellee.

IN THE

Supreme Court of the United States.

EDWIN A. McINTIRE and MARTHA McINTIRE,
Appellants,
vs.
MARY C. PRYOR,
Appellee.

No. 373.

On Appeal from the Court of Appeals of the District of Columbia.

Suggestion by appellee of a diminution of the record, and motion for an order upon the appellants requiring them to bring up the omitted portions thereof.

1. Now comes Mary C. Pryor, appellee herein by Franklin H. Mackey, her solicitor, and suggesting to the court that the transcript of the record as now brought into the Clerk's office of this court does not contain all the testimony and exhibits upon which this cause was argued and submitted to, and considered by, the Court of Appeals of the District of Columbia, but only a portion thereof, to wit, about one-half, moves the court for an order upon appellants to bring up the omitted portions thereof under the ruling in Railroad Co. *vs.* Shutte, 100 U. S., at page 647.

2. As grounds for the foregoing motion, appellee shows to the court here that a stipulation entered into by and between the respective parties to this cause, appears of record at folios 811–812 of said transcript in words and figures following to wit:

"It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, Equity No. 12761; Brown *vs.* McIntire, Equity No. 12977; Ackerman *vs.* McIntire, Equity No. 12978; Southey *vs.* McIntire, Equity No. 13034, and Hayne *vs.* McIntire, Equity No. 13177, in the Supreme Court of the District of Columbia, so far as the same may be relevant to the issues raised in this case of Pryor *vs.* McIntire (Equity No. 12761) in respect of Emma Taylor, Martha McIntire or Edwin A. McIntire *may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein*, subject to all and any objections as to the materiality and competency thereof which could have been made if the same had been taken therein."

3. That the said stipulation was entered into by reason of the fact that the said five suits in equity had been brought against said E. A. McIntire and Martha McIntire to set aside certain conveyances in each of said cases on the ground of fraud, said fraud consisting in this, that the grantee in each of said conveyances was alleged to be one Emma Taylor, who was a fictitious person, and an invention of the defendants for the purpose of defrauding plaintiffs and that the subsequent deeds executed in her name to said Martha McIntire and E. A. McIntire were forgeries, and further that the alleged public sales claimed to have been made to her by said E. A. McIntire under deeds of trust to him never in fact took place, and further that said Martha McIntire the pretended purchaser of the real estate described in said deeds was a woman comparatively without means, that she paid nothing for said properties, and that she was a *mala fide* purchaser with full notice of the frauds of her brother the said E. A. McIntire.

4. By reason of the aforesaid circumstances and other allegations of like character in all of the said cases it was agreed between counsel for the respective parties that instead of repeating the examination of the witnesses in each of said five causes, their testimony as given in any one of said causes

together with the exhibits filed therein might be read in each of the other causes at the hearing, as appears by the stipulation above set forth. This was done to save the great expense and outlay of time which would have been required had the said testimony been repeated in each of said five cases.

5. That accordingly on the hearing in the Supreme Court of the District of Columbia sitting in equity, and also on the appeal to the Court of Appeals of the District of Columbia, the said causes were all heard together and the testimony and exhibits in each case was taken and considered as being a part of every other of said cases including the cause of Pryor *vs.* McIntire (now in this court as McIntire *vs.* Pryor). This will appear from the opinion of the said Court of Appeals, 7 Court of Appeals, D. C., 417, Pryor *vs.* McIntire, wherein the court said:

> "This is one of a series of five cases, argued and submitted at the same time, wherein different parties have sued the same defendants to cancel certain deeds and annul certain pretended sales of land, in the District of Columbia, claimed to have been made by Edwin A. McIntire, trustee, in violation of his obligations and duties as trustee in certain express trusts, and in pursuance of a scheme to defraud the makers and grantors therein. The other cases are No. 466, Brown *vs.* McIntire *et al*; No. 567, Ackerman *vs.* McIntire *et al*; No. 468, Southey *vs.* McIntire *et al*; and No. 469, Hayne *et al vs.* McIntire.
>
> "*A considerable part of the testimony is common to all of the cases* and was taken in one [each] under a stipulation for its consideration in all."

And appellee further represents that the testimony in the other cases having been so, as aforesaid, considered by the court under the said stipulation of counsel, and the court having arrived at its conclusion and made its decree in this case on a consideration of all of said testimony and exhibits so, as aforesaid, taken and filed in all of said five cases, this court cannot properly consider this case of McIntire *vs.* Pryor unless the testimony and exhibits in the other four cases are also before

it, for to do otherwise would be to decide the case with the absence of a great deal of material and relevant testimony not before it but which however was before the court below and which entered into and controlled its judgment in the final disposition of this case.

And appellee further represents that the presence in this case of said testimony and exhibits, as found in said four cases, is necessary to a full and fair hearing of this case, the said testimony and exhibits consisting of the forged deeds and the evidence in respect thereof and the evidence of other frauds of like character committed at or about the same time in respect of like trust properties all bearing upon the question whether said alleged fictitious person, Emma Taylor, was really a fictitious person or not, and whether said E. A. McIntire and Martha McIntire are guilty of the frauds charged against them in the case at bar. That this court and other courts have frequently decided that such evidence is admissible. Thus in the case of Lincoln *vs.* Claflin, 7th Wall, p. 138, this court has said:

> "Where fraud in the purchase and sale of property is in issue, evidence of *other fraud of like character* committed by the same parties *at or near the same time* is admissible. Its admissibility is placed on the ground that where transactions of a similar character executed by the same parties are closely connected in time the inference is reasonable that they proceed from the same motive."

And to the same effect is the language of this court in Castle *vs.* Bullard, 23 Howard, p. 186, where it was said:

> "Decided cases have established the doctrine that *cases of fraud* like the present are among the well recognized exceptions to the general rule that other wrongful acts of the defendant are not admissible in evidence on the trial of the particular charge immediately involved in the issue. *Similar fraudulent acts are admissible in cases of this description if committed at or about the same time*, and when the *same motive may reasonably be supposed to exist*, with a view to establish the intent of the defendant *in respect to the matters charged against him.*"

Again, the evidence in these other cases being relevant to this case, would have been taken and filed in this case but for the stipulation (above set forth) that the said testimony, as taken in the other cases, might be read on the hearing *as if it were taken in this case.* Much of the evidence in those cases is of a *circumstantial character* directly bearing upon the fraud alleged in this case and is the very kind of evidence usually resorted to to establish fraud. Said this court in the above cited case of Castle *vs.* Bullard :

> "Much of the evidence was of a circumstantial character, and it is not going too far to say that some of the circumstances adduced if taken separately might well have been excluded. Actions of this description, however, where fraud is the essence of the charge, *necessarily give rise to a wide range of investigation*, for the reason that the *intent* of the defendant is more or less involved in the issue * * * * Whenever the necessity arises for a resort to circumstantial evidence, *either from the nature of the inquiry or the failure of direct proof, objections to the testimony on the ground of irrelevancy are not favored* for the reason that the force and effect of circumstantial facts usually and almost necessarily depend *upon their connection with each other.*"

For the foregoing reasons the court below having considered all the circumstantial evidence found in said four cases as well as in this case, as by the stipulation of counsel, it had a right to do, came to the conclusion that said E. A. McIntire and Martha McIntire were guilty of fraud in the transaction complained of in the case at bar, and as to the said alleged Emma Taylor it found that :

> "There is no such personage as the Emma Taylor who figures in the transactions of this and the other cases as grantee and grantor in certain deeds and instruments of writing. *She is an invention of Edwin A. McIntire.*" Pryor *vs.* McIntire, 7 Ct. of Appeals D. C., 425.

From these conclusions and the consequent decree in this cause declaring said deeds null and void the said Edwin A.

and Martha McIntire have appealed to this court and now ask that the decree of the Court of Appeals be reviewed and reversed. They *have not, however, appealed the other cases* and therefore the record in those cases is not before this court. Yet it is manifestly necessary that before this court should consider this case it should have before it the same evidence *and all of it* which was before the court below and upon which its conclusions were made up and declared, to wit; the evidence and exhibits which includes the bills and answers in all five of the cases.

The question now arises whether the appellants may select only a part of the record upon which this case was heard in the court below and by bringing it here obtain a hearing of their appeal upon about one-half of the testimony and exhibits upon which that court made up its judgment herein. Shall they compel the appellee, who, the record now in this court shows, is a poor colored woman, a widow and earning her living by washing,* and who, as the court below found, the appellants have defrauded and impoverished, to bring up, at an expense to her of several hundred dollars, the omitted portions of the record in order to obtain a rehearing which she is not seeking, but which, if reheard at all should be properly reheard. We submit to the court that to allow such a practice would be to open the way by which future appellants may omit from the transcript such portions thereof as tells against them, and put the burden upon the winning side of advancing the costs necessary to bring up, by a writ of *certiori*, these omitted portions of the record which are in their favor. We submit we are not answered by saying that the appellants have given a bond for costs and we may at some time in the future recover

* "Mary C. Pryor and her husband were simple-minded colored people, and relied fully on the integrity of Edwin A. McIntire, whom they believed to be their friend. * * * *She was very poor*, and had but little intelligence. That she had perfect confidence in McIntire in the beginning is evident. She was kept in ignorance of the facts of the sale, and of the truth about the so-called Emma Taylor, and had no information with respect thereto until a short time before the institution of this suit." Pryor *vs.* McIntire, 7 Court of Appeals D. C., 425.

the comparatively large sum necessary for us to advance in order to put a record before this court which it was their duty, if they desire that decree reviewed, to have brought here in the first instance. The appellee, as we have shown, is poor and it would be a heavy and grievous burden upon her to require her to advance money which it it is the duty of the appellants to do. In Railroad Co. *vs.* Schutte, 100 U. S., p. 647, heretofore cited, the appellants in that case had brought to this court just such an insufficient record as the appellants here have brought and, the matter being brought to the attention of the court, Chief Justice Waite speaking for the court, said:

> "While we desire to encourage in every proper way all attempts made in good faith to exclude immaterial matter from transcripts brought here on appeals or writs of error, it will not do to permit the appellant or the plaintiff in error to make up a record to suit himself, without regard to the wishes of his opponents or the rules and practice of the court. We therefore order,—
>
> "That the appellees file with the clerk of this court, and with the counsel for the appellant, on or before the first day of February next, a statement of the papers, documents and proofs used on the hearing below, and omitted in the transcript now on file, which they deem necessary for the proper presentation of the cause, and that unless the appellant shall, on or before the fifteenth day of March, file in this court as part of the record copies of such papers, duly certified by the clerk of the Circuit Court, or his deputy, under the seal of the court this appeal be dismissed.
>
> "If in this way unnecessary papers are brought up, we will, on application, make such order in respect to costs as may under the circumstances be proper."

We therefore respectfully submit that the appellee herein is entitled to the same relief against the appellants herein as was granted in the case above cited, and therefore we have made this motion.

Respectfully submitted,

FRANKLIN H. MACKEY,

Solicitor for Appellee.

FRANKLIN H. MACKEY, being duly sworn deposes and says that he is the solicitor of record for the appellee, Mary C. Pryor; that he knows the contents of the foregoing motion and that the facts stated therein upon his personal knowledge are true and those stated upon information and belief he believes to be true.

FRANKLIN H. MACKEY.

Subscribed and sworn to before me this.....day of November, A. D. 1897.

A. E. L. KEESE,
Notary Public, D. C.

[SEAL.]

IN THE

SUPREME COURT OF THE UNITED STATES.

EDWIN A. McINTIRE and MARTHA McINTIRE, *Appellants*, *vs.* MARY C. PRYOR, *Appellee.* } No. 373.

TO ENOCH TOTTEN, ESQ.,
Solicitor for Appellants.

Sir:—You will please take notice that on Monday, the 15th day of November, 1897, at the opening of the court or as soon thereafter as counsel can be heard, a motion of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of said court thereon.

FRANKLIN H. MACKEY,
Solicitor for Appellee.

Service of the within motion and notice is hereby acknowledged this.....day of November, A. D. 1897.

ENOCH TOTTEN,
Solicitor for Appellants.

McINTIRE *v.* PRYOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 109. Argued January 4, 5, 1899. — Decided February 20, 1899.

The facts in this case, as detailed in the statement of the case and the opinion of the court, show that a gross fraud was committed by the plaintiffs in error against the defendants, to dispossess them of the property in question; and in view of the peculiar circumstances of the case, the fraud, so glaring, the original and persistent intention of McIntire through so many years to make himself the owner of the property, the utter disregard shown of the rights of the plaintiff as well as of the mortgagee, the false personation of Emma Taylor, and the fact that the decree can do no harm to any innocent person, this court holds that these facts do away with the defence of laches, and demand of the court an affirmance of the action of the Court of Appeals of the District of Columbia, granting the relief prayed for by the plaintiffs below.

This was a bill in equity filed in the Supreme Court of the District of Columbia by Mary C. Pryor against Edwin A. McIntire, Martha McIntire and Hartwell Jenison to obtain the nullification and avoidance, upon the ground of fraud, of a certain foreclosure of real estate in the city of Washington.

The facts were in substance that, in May, 1880, the plaintiff Mary C. Pryor, being the owner of parts of lots twenty-one and twenty-two in square numbered 569, conveyed the same by trust deed to Edwin A. McIntire to secure the defendant Hartwell Jenison in the sum of $450 for money advanced by Jenison, which was represented by a note made by the complainant and her husband Thomas Pryor, since deceased, payable one year after date, with interest at the rate of eight per cent, payable quarterly.

Default having been made in payment of the note, the property was regularly advertised for sale under the deed of trust, and, after a week's postponement on account of the weather, was sold on June 17, 1881, and bought in nominally by Jenison for $806, the difference between $450, the amount of the Jenison loan, and $806, the amount for which the prop-

erty was sold, being the taxes which had accrued on the property, together with the expenses and commissions attending the sale, which amounted all told to $839.19. In this connection the plaintiff averred that the defendant McIntire had represented to her husband, Thomas Pryor, that the sale would be only a matter of form, and that he, Pryor, could buy in the property, and that time would be given him to pay the indebtedness; that the sale was made without the knowledge of Jenison, the holder of the note secured by the deed of trust; that, as had been previously agreed, Pryor, the husband of the plaintiff, did in fact become the purchaser at the trustees' sale for the sum of $700, and the property was struck off to him; that they were not disturbed in the possession of the property for some time, when McIntire called on them and told them that they might pay rent to him, and that it would be applied to the payment of the principal of the debt, and that accordingly they paid rent until September, 1884, at the rate of six dollars per month, with the understanding that this would be applied to the liquidation of the note, and that when the same was paid the property would be reconveyed to the plaintiff. On June 29, 1881, a few days after the sale, a deed was executed to Jenison, for the nominal consideration of $806, and on the same day Jenison gave a new note to one Emma Taylor for the sum of $425, and secured the same by a deed of trust on the same property, the note being payable one year after date with eight per cent interest. Subsequently, and on April 21, 1882, Jenison conveyed the property outright to Emma Taylor on receiving the $425 note.

Subsequently, and in May, 1884, Emma Taylor conveyed the property to Martha McIntire, the sister of the defendant Edwin A. McIntire. By reason of some supposed defect in the deed from Jenison to Taylor, Jenison subsequently, and on September 27, 1887, made a quitclaim deed of his interest in the property to Martha McIntire, who, in October, 1886, built four houses upon the property, two fronting on F street and two in the rear facing an alley, of which she has had the use and enjoyment ever since.

Statement of the Case.

Plaintiff's averments in this connection were that the sale by McIntire under the Jenison deed of trust was made in his own interest, with the fraudulent intent of getting possession of the property; that the $425 note given by Jenison to Emma Taylor, secured by a deed of trust, was fictitious and a part of the same scheme; that Emma Taylor was a fictitious person; that the deeds to her were void; that the deed from her to Martha McIntire was also fictitious, and that the subsequent deed from Jenison to Martha McIntire of September 27, 1887, was procured by the fraudulent representations of Edwin A. McIntire.

The prayer was that the sale under the deed of trust be set aside; that an account be taken of what was due by the plaintiff upon the note for $450, and upon the payment of the same that the plaintiff be declared the owner of the property, and that the trustees be required to account to her for rents, issues and profits received by them on account of such property since the foreclosure sale.

The answer of Edwin A. McIntire denied all allegations of fraud and deceit; averred that the sale was *bona fide* in all respects; that he had no interest whatever in the property, and that it belonged to his sister Martha McIntire, who bought it in the regular course of business, and who, in her answer, denied that she participated in or had anything to do with any fraudulent scheme to get possession of the property, or that she had knowledge of any fraud on the part of her brother, and alleged that she was a true and *bona fide* purchaser of the property in dispute.

Jenison also answered the bill, stating that he had directed the sale to be made and the property bought in for him, if necessary for his protection; that he made the deed to Emma Taylor, as well as the quitclaim deed to Martha McIntire, and that he knew nothing whatever of any fraud on the part of Edwin A. McIntire.

Upon a hearing upon pleadings and proofs, the Supreme Court rendered a decree dismissing the bill upon the ground of laches. Plaintiff appealed to the Court of Appeals, which reversed the decree of the court below; remanded the case to

the Supreme Court of the District of Columbia, with instructions to take an account of the indebtedness due by the plaintiff to Jenison, together with an account of the rents and profits collected by the defendants, and directed that upon the coming in of such report a final decree be passed annulling each and all of the several trust deeds that clouded the title to said premises, and awarding possession thereof to plaintiff upon her paying the amount due Jenison, and to the defendant Martha McIntire, upon the statement of the account. 7 D. C. App. 417.

In compliance with these instructions the Supreme Court subsequently entered a final decree in favor of the plaintiff for $1664.93, and set aside the deed of trust from plaintiff and her husband to Edwin A. McIntire, and all the subsequent deeds, six in number, which operated as a cloud upon plaintiff's title.

Another appeal was taken from this decree to the Court of Appeals, which affirmed the decree of the Supreme Court, 10 D. C. App. 432, whereupon Edwin A. McIntire and Martha McIntire took an appeal to this court.

Shortly after the commencement of this suit, four other suits were begun by Elizabeth Brown, Annie Ackerman, John Southey et al. and Joseph Hayne and wife, for similar purposes as the above, to procure the annulment of certain deeds of real estate to and from Emma Taylor, based upon her supposed fictitious character. The details of the fraud set forth in these bills were different, but in all of them the fictitious character of Emma Taylor was charged, and in all of them, but one, Martha McIntire purported to have become the owner of the property. For the purpose of saving the expense of repeating testimony, it was stipulated that the testimony in each of the cases, so far as relevant, might be read and considered by the court as having been taken in each of the other cases. The Court of Appeals entered a decree in each of these cases, except one which was dismissed on the ground of laches, granting the relief prayed. The amount involved in the other cases, except the *Pryor case*, was insufficient to give this court jurisdiction; but upon the appeal to this court the

testimony in each of the other cases was brought up under the stipulation in the *Pryor case.*

Mr. Frank T. Browning for appellants. *Mr. Enoch Totten* and *Mr. William H. Dennis* were on his brief.

Mr. Franklin H. Mackey for appellee.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

Two questions are presented by the record in this case: First, that of fraud in the sale and subsequent manipulation of the property in suit; and, second, that of laches in instituting these proceedings.

1. The question of fraud necessarily involves the examination of a large amount of testimony, and a scrutiny of the successive steps taken, which finally resulted in the transfer of the property from its original owner, Mary Pryor, to its present owner of record, Martha McIntire.

The bill avers and the answer admits the execution of a deed of trust May 2, 1880, by the plaintiff and her husband to Edwin A. McIntire as trustee, to secure a note for $450, payable to Hartwell Jenison one year after date, with interest at eight per cent. The transaction originated four years previously, (May 2, 1876,) when the plaintiff and her husband placed upon the same property a deed of trust, in which Brainard H. Warner and Henry McIntire were named as trustees, to secure a note of $500, payable to George E. Emmons two years after date, with interest at ten per cent. This loan had been made through the agency of B. H. Warner & Co., real estate agents, and the note appears to have been purchased as an investment by Jenison, who was then a clerk in the Treasury Department. Upon the maturity of this note, May 2, 1878, twenty-five dollars were paid by way of interest, and fifty dollars on account of the principal, but nothing was done until 1880, when the deed of trust for $450 was given. Jenison appears to have purchased the first note

at the suggestion of Henry McIntire, a brother of Edwin A., who was also a clerk in the Treasury Department. Jenison states that Edwin A. collected what was paid upon the note and attended to the second deed of trust himself, in which his name was substituted as trustee in the place of the trustees named in the first deed. Jenison appears never to have seen the Pryors, nor their property, having entire confidence in McIntire's integrity. The property seems to have been worth at that time from $1800 to $2400, and was occupied by the plaintiff's husband as a wood and coal yard. Both the Pryors were uneducated colored people, Pryor making his living by whitewashing, sawing wood, and selling coal, and his wife by taking in washing. The husband died about three months before this suit was begun.

The note fell due May 2, 1881. Neither principal nor interest was paid, and upon the following day, May 3, a warranty deed appears to have been executed by plaintiff and her husband to Martha McIntire, a sister of the principal defendant, for the nominal consideration of five dollars. It does not clearly appear why this deed was executed, as it was never recorded. Upon its face it is an ordinary warranty deed, and although the Christian name of the grantee, Martha, is obviously written over an erasure, attention is called to this fact in the testamentary clause. The grantors' signatures are probably genuine, although the deed appears to have been procured of the plaintiff in total ignorance of its contents or purport. Indeed, she had never seen Martha McIntire and knew absolutely nothing about her. Edwin A. McIntire's explanation is that Pryor came to him; said that he could not pay the note, and asked him whether he could get a purchaser of the property who would take it off his hands and assume the incumbrance and taxes, which he represented to be twenty or thirty dollars; that he offered it to his sister as an investment; had the deed made to her for a nominal consideration, with the understanding that she would assume the incumbrance and give Pryor a lease on the property for a year. He afterwards ascertained that the taxes were ten times the amount he had supposed, and reported the

fact to his sister, who thereupon declined to take the property, which accordingly went to a foreclosure. In explanation of the erasure he said the deed was first made to his uncle David McIntire, who was looking out for bargains in real estate, and then altered to Martha McIntire and noted on the deed itself.

It seems somewhat singular that neither of these parties should have been willing to give five dollars for a piece of property worth at least $1800, and subject only to the lien of a mortgage of about $475, and $250 of special taxes; and equally singular that the Pryors should have been willing to dispose of their equity in the property for so small a sum. Indeed, it is difficult to believe that they knew what they were doing when they signed the deed.

But as nothing has ever been claimed by virtue of this deed, it is practically out of the case, except so far as it tends strongly to show an original design on the part of Edwin A. McIntire, who had entire charge of the transaction and witnessed the deed, to vest the title to the property in some member of his family, whom the other evidence in the case shows him to have used as a mere catspaw for himself.

Failing to induce his sister to take the property, McIntire, as trustee, obtained written authority from Jenison to sell upon foreclosure of the deed of trust, advertised the property for sale upon June 10, and after a postponement sold the same on June 17, but to whom the property was struck off, and who was the real purchaser, is somewhat uncertain. There is a wide divergence in the testimony on this point. Plaintiff swears that the first intimation she had of the sale was the display of the auctioneer's flag in front of the property, which was then occupied as a coal yard. Not understanding what it meant, her husband went to see McIntire, who came down that day, and "said that the trustee was pushing him, and he was compelled to put the flag up and have a sale, but that he would allow my husband to bid it in and would knock it down to him." Three or four witnesses, who were present at the sale, swore that the property was struck off to Pryor. Plaintiff swore to the same effect, but she was so far from where the auctioneer stood that it was very doubtful whether she

could have heard it. She also swore to an agreement that she was to pay a rent of six dollars a month for the property, which was to be applied on the purchase money. Certain it is that rent was paid for the property after the sale and until some time in 1883, sixteen receipts for which, signed by McIntire, are produced. This testimony with regard to the sale and the arrangement for payment is wholly denied by McIntire, who produces a bill for auctioneer's services, showing the sale of the property to Jenison, to whom on June 29, 1881, McIntire executed a deed of the property in alleged pursuance of the foreclosure sale, upon an expressed consideration of $806, but kept the same from record unknown to Jenison for a period of nearly ten months, and until April 21, 1882, when he caused the same to be recorded. Did the case stand upon this testimony alone we should entertain grave doubts whether the oral evidence was sufficiently definite and credible to overcome the testimony of McIntire, the documentary evidence of the receipts for rent and the deed to Jenison in pursuance of the sale; but all doubts in this particular are fully resolved by the subsequent conduct of McIntire with reference to the property.

It seems that Jenison, being unable or unwilling to pay the expenses of foreclosure, which amounted to $87.88 and accumulated taxes to the amount of $278.81, for the purpose of raising money to pay these, executed a note to one Emma Taylor for $425, payable in one year, and secured the same by a deed of trust upon the property to the defendant McIntire as sole trustee. This deed was also executed on June 29, 1881, and was of even date with the deed executed by McIntire to Jenison in pursuance of the foreclosure.

The testimony in this case turns largely upon the existence and identity of Emma Taylor. It is charged in the bill that she is a fictitious person, and that a sister of McIntire's, whose name was Emma T. McIntire, was represented and held out by him as Emma Taylor. Certainly, so far as witnesses have sworn to having seen Emma Taylor, they might easily have been led into supposing that his sister was this person. All that we know definitely of Emma Taylor is that from April 1,

1881, to September 6, 1884, her name appears as grantor or grantee in seventeen different deeds, having an aggregate consideration of some $13,000. Copies of nine of these deeds appear in the record, in all but one of which she is described as of the city of Philadelphia, although all of these deeds, both to and from herself, were executed in Washington and acknowledged before the same magistrate. No letters written by her are produced, and but one addressed to her. This bears date September 19, 1887, and was written by McIntire, asking for her address. The letter seems to have been addressed simply to "Pittsburg, Penn.," on some information of her being there, and to have been returned to the writer. This letter was probably a subterfuge. The transactions in which she appears as a party all seem to have been carried on through McIntire as agent, who collected rents and other moneys, paid taxes and made repairs on her account. She seems then to have disappeared as suddenly as she originally appeared, and McIntire professes himself entirely unable to find her, or learn of her present whereabouts. This is certainly a feeble and suspicious explanation. In view of the number and magnitude of the transfers to which she was a party, we should have reason to expect that her existence could be established beyond the shadow of a doubt. If she were a resident of Philadelphia, as now claimed, McIntire could hardly have failed to have had correspondence with her; to have known her address and to have been able to find dozens of her friends, relatives or neighbors, who could have proved that she was a living person. If she were a resident of Washington during these years, where did she live? In what bank did she keep the money she invested in real estate? Who were her acquaintances and why did she vanish so suddenly after these large transactions? She could scarcely have failed to leave a correspondent here, and that correspondent could scarcely have failed to be McIntire himself. It is incredible that a woman so well off and so alert in matters of business should have disappeared at the moment when her presence was indispensable and left no trace behind her.

What have we in lieu of what we might naturally have ex-

pected? A few witnesses who swear they saw her once and saw her under circumstances which indicated that they had seen a woman who passed under that name, and who might have been a wholly different person — one, who took a deed from her, and after testifying that he had never seen her, on being recalled said that he "somehow had the impression" that upon one occasion she had been pointed out by McIntire's clerk in his office as Emma Taylor. The clerk himself, who was in McIntire's employ five years, has no recollection of ever meeting her, but had heard her name mentioned, and thinks he must have seen her from the fact that he witnessed a deed purporting to have been signed by her. Another, who kept an ice cream parlor on G street from 1876 to 1879, saw her once or twice in McIntire's office, and heard her called Emma Taylor by a lady who used to come to his parlor with her. Another, who used to visit McIntire's office every day in 1879, saw a lady frequently come there, whom he was informed was Emma Taylor, and that she talked about buying real estate. It appears, however, that there was no deed to her prior to April 1, 1881. Another, who had her studio on F street, used to take her meals at the same dining room, heard her spoken of as Miss Taylor, but never spoke to her herself, and did not know whether her name was Emma Taylor or not. Another, named Atkinson, who was with McIntire until the latter part of 1880, testified that he saw a woman a number of times in the office whose name he understood was Emma Taylor, and that she was a different person from Emma T. McIntire. Another testified that he had met her at the office of the magistrate before whom she made her acknowledgments.

In addition to this most indefinite testimony, we have only the testimony of Edwin A. McIntire, Martha McIntire and Emma T. McIntire, two of whom are parties to this suit and strongly interested in the result. Emma T. McIntire testifies that she was never called Emma Taylor, and that her middle name was not Taylor, and that she never executed any of the deeds purporting to have been signed by Emma Taylor. Neither she nor her sister seems to have met her more than

three or four times. It further appears that all the deeds to Emma Taylor, even from McIntire himself, carried to the recorder's office for record, were returned to McIntire, though this was denied by him, and that rents due to Emma Taylor were all paid to him. It seems, too, that he paid all the taxes upon her property, though he swears he has no recollection of doing so.

We give but little weight to the certificate of the magistrate who was not sworn as a witness, that Emma Taylor appeared before him and acknowledged the deeds to which her name was appended as grantor, since it would have been practically easy for McIntire to represent another person as Emma Taylor.

The testimony of McIntire himself with regard to Emma Taylor is extremely unsatisfactory. Notwithstanding the number and magnitude of the transactions in which he took part and acted as her agent, he has no explanation of the manner in which the consideration for these deeds was paid or received by her, the bank in which it was deposited, or from which it was drawn, and is unable to produce a single check or letter signed with her name. His memory is excellent where he cannot be contradicted and as to unimportant details, but fails him utterly as to the leading facts of the transactions. While for three years his relations with her must have been constant and confidential, collecting and disbursing moneys for her and looking out for real estate investments, yet he produces no account with her, and professes to have completely forgotten that he ever collected rent for her at all. One Alfred Brown who bought property from her in May, 1883, gave $200 in cash and twelve notes of $75 each, payable at intervals of three months, the last maturing in May, 1886, swears that he paid every one of them as they fell due to McIntire personally; yet McIntire swears he has no recollection of collecting these notes, and that Emma disappeared from Washington about 1884. He tells us that she was a woman who was constantly looking out for bargains in real estate, yet the records show that all her transactions were with him or through his agency, and in every case in

which she became the purchaser of lands the title ultimately became vested in his sister Martha. In this connection it is a suspicious circumstance that whenever she made a conveyance, the deed was not usually recorded for years afterwards, when the necessity for making a complete chain of title required it to be put on file. Upon the other hand, the deeds made to her as grantee were immediately placed on record. None of the parties to whom she gave or from whom she received deeds of property ever met her, nor did the clerk in McIntire's office during these years recollect that he had ever seen her.

He accounts for his inability to produce letters, receipts, accounts or written evidences of any sort, showing his transactions with her, by an utterly improbable story of a fire in his office, which seems to have conveniently consumed all these documents, including a large ledger, in which her accounts were contained, and to have spared everything else, leaving no mark of fire or even the stain of smoke upon documents showing his relation to others. He professes to have thought that Emma Taylor was engaged in one of the departments, because she came down F street after the hour the departments would close, but never asked her in what department she was employed, and the compiler of the "Blue Book" swears that no such person was in the employ of the Government in Washington at that time. All the witnesses who testified to having seen a person of that name fixed the time as prior to the date of her first deed, April 1, 1881; and not one of them, except the McIntires, is able to identify her as *the* Emma Taylor who signed the deeds in question.

There is strong evidence tending to establish the identity of Emma Taylor and Emma T. McIntire. A niece of McIntire's swears that she always understood that the initial in the name of Emma T. McIntire stood for Taylor, and that she was always called Emma Taylor to distinguish her from witness' sister Emma V. McIntire. This witness is corroborated by the production of the family Bible, from which it appears that Emma T. McIntire's father was named Edwin Taylor McIntire. Her own explanation, that her middle initial stood

for Tinsey Ush or Tots — a pet name given her in infancy by her father — does not seem plausible in the face of this testimony. In addition to this, a large number of documents, signed both by Emma Taylor and Emma T. McIntire, were introduced in evidence for other purposes, and a comparison of the signatures shows a resemblance between some of them which is difficult to account for, except upon the theory that they were written by the same person, although the later ones signed by Emma Taylor show an evident attempt to disguise her hand.

But it is useless to pursue this subject further. The testimony of the three McIntires is too full of contradictions and absurdities to be given any weight. While under certain circumstances the other testimony for the defendant might be sufficient to prove that there was such a person as Emma Taylor, when considered with reference to what we have a right to expect in a case of this kind, it falls far short of it, and when read in connection with plaintiff's testimony upon the same point, we are left in no doubt that Emma Taylor was a clumsy fabrication. If the person put forward by McIntire to personate her were not his own sister, it was some one whom he used for that purpose. Under whatever view we take we are satisfied that Emma Taylor was a creation of McIntire's brain, born of the supposed necessities of his case, and bolstered up by the false testimony of himself and his sisters. *Stat nominis umbra.*

The subsequent proceedings in the case show a consummation of the fraud by which the property was ultimately vested in Martha McIntire. The deed of trust given by Jenison to Emma Taylor was never formally foreclosed. It seems that McIntire had promised Jenison that he would try and find a purchaser of the property before the note fell due on June 29, 1882, so that he might get back a part of the $450 loaned to Pryor, none of which he had received; but professed himself unable to do so, and so informed Jenison, a man of perfect integrity but of little experience and much unwisdom in business methods, who seems to have had entire confidence in him, and on April 13, 1882, addressed him a note, in which he

stated that he was not in a condition to carry the property; that he should doubtless have to submit to a sacrifice by a forced sale, and requested him to advertise and do the best he could in its disposition. Considering that the property was worth from $1800 to $2400, when the mortgage to Emma Taylor was only $425, the interest on which was less than $40 per year, while the Pryors were paying six dollars a month rent, it would appear that Jenison was completely hoodwinked as to its actual value.

After some futile efforts to induce McIntire to put the property up at auction, he was finally persuaded, on April 19, 1882, more than two months before the Emma Taylor note was due, to deed the property to Emma Taylor. This deed was recorded immediately and at the same time with his deed upon foreclosure to Jenison, which had been executed ten months before. Both of these deeds, after being recorded, were returned to McIntire. This was the last step necessary to consummate the fraud by which the plaintiff lost her property, and Jenison lost the money he had loaned her upon the deed of trust. Had McIntire been content to defraud the Pryors of their property, he might, after his duties as trustee had been fully discharged, have purchased of Jenison, who doubtless would have been glad to sell for the amount of his mortgage and interest; but his desire also to defraud Jenison of this amount made it necessary for him to introduce another party to purchase Jenison's interest, from whom his sister Martha (that is, himself) might pose as a *bona fide* purchaser. In this he overreached himself.

The title remained of record in Emma Taylor until May 31, 1884, when she made a warranty deed to the defendant Martha McIntire for the expressed consideration of $2500. Subsequently, and on September 27, 1887, Jenison and wife made a quitclaim deed, apparently of further assurance, to Martha McIntire, for a consideration of $100, paid by the check of Edwin A. McIntire. The answer avers this deed to have been made to cover and cure a defect in the deed from Jenison to Taylor, but on its face it purported to pass to the grantee, Martha McIntire, all claims for drawback or rebate on account

of special taxes upon the property, and it is probable that this was its main object.

We do not care to discuss the question whether Martha McIntire was a *bona fide* purchaser of this property. So far as it turns upon her ability to pay the $2500 named as a consideration, it is at least doubtful. So far as it turns upon her actual payment of this consideration, it is more than doubtful. If Emma Taylor were a fictitious person, and the deed from her a forgery, the title of Martha McIntire falls to the ground, except so far as it depends upon the quitclaim deed of Jenison to her of September 27, 1887, which it is not improbable was procured by Edwin A. McIntire for the very purpose of giving a semblance of title in case Emma Taylor were eliminated from the case. But whatever was done by Martha McIntire to this property; whatever title she acquired was through the agency of her brother, and she is as chargeable with his frauds as if she had committed them personally. *United States* v. *State Bank*, 96 U. S. 30; *Griswold* v. *Haven*, 25 N. Y. 595; *Reynolds* v. *Witte*, 13 S. C. 5. It was held by this court in the case of *The Distilled Spirits*, 11 Wall. 356, that the rule that notice of fraud to an agent is notice to the principal applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him as agent in a prior transaction for the same principal, and present to his mind at the time he is acting as such agent. Much more is this the case where the fraud is committed by the agent himself in obtaining the title to the property for the benefit of his principal. But further than this, we have little doubt that the property was really purchased for the benefit of McIntire himself. While Martha McIntire signed the contract for the construction of the house upon these lands, the testimony of the contractors shows that they supposed they were doing the work for McIntire himself; that they had no dealings with Martha; that they were paid by checks signed by McIntire himself; although she came down and looked at the houses, and seemed to be pleased with them.

We agree with the Court of Appeals that in view of their strong pecuniary interest in the case, the improbability of

many of their statements, the obvious fabrication of the Emma Taylor story, and the manifest subservience of the sisters to their brother's schemes, no confidence whatever can be placed in the testimony of either member of the family. This conviction is strengthened by a circumstance appearing in the testimony, although not directly relevant to the issue, that there was another sister, Sarah I. McIntire, who died in Philadelphia, *January 10*, 1881, leaving a deposit of $1196.60 in the Philadelphia Savings Fund Society. To obtain this money a power of attorney, bearing date *April 19*, 1881, was prepared by McIntire, purporting to be signed by Sarah I. McIntire, though she had been dead three months, and acknowledged before a notary public in Washington. It was also signed by McIntire as a subscribing witness, and by virtue of its authority Martha McIntire drew the money from the bank.

2. The question of laches only remains to be considered. The sale was made under the foreclosure of the Jenison mortgage, June 17, 1881. The bill was filed October 21, 1890, a delay of nine years and four months. Upon the theory of the plaintiff, however, — and it is upon her allegations and proofs that the question of laches must be determined, — the sale was made in her interest. The rent paid by her was to be applied by McIntire toward the extinguishment of the Jenison mortgage, and there was nothing definite to apprise her to the contrary until the fall of 1886, when she saw the contractors beginning to build, and notified them that the property belonged to her and not to McIntire. But four years elapsed from this time and the property has not been shown to have greatly increased in value except by the improvements, which were allowed to the defendants upon final decree.

We have a right to consider in this connection that the plaintiff is an ignorant colored woman; that she has been wheedled out of her property by an audacious fraud, committed by one in whom she placed entire confidence and who assumed to act as her agent; that this agent procured the title to the property to be taken in his own interest for little more than a nominal sum by the false personation of Emma Taylor; that the property is still controlled and probably

owned by himself; that the position of the property and of the parties to the suit has not materially changed during the time the plaintiff has been in default, nor the property shown to have rapidly risen in value, and that the rights of no *bona fide* purchaser have intervened.

We have no desire to qualify in any way the long line of cases in this court, too numerous even for citation, in which we have held that where the fraud is constructive, or is proved by inconclusive testimony, or by evidence falling short of conviction, and the property has greatly increased in value, great diligence will be required in the assertion of the plaintiff's rights. But these were all cases either of bills to establish a trust, to open settled accounts, bills not involving fraud, or where the fraud was not clearly proven, or where, with knowledge of the facts, the fraud had been deliberately acquiesced in, bills to impeach judicial proceedings, or where the property had passed into the hands of persons innocent of the fraud, or with no actual notice that a fraud had been committed.

Granting all that may be fairly claimed of these cases, there is another class having a different bearing, in which it has been held that in case of actual fraud a delay, even greater than that permitted by the statute of limitations, is not fatal to the plaintiff's claim. The leading case is that of *Michoud* v. *Girod*, 4 How. 503, which was a case of actual fraud committed by trustees of real estate against their *cestui que trust*. A bill filed thirty-six years after the commission of the fraud was held not to have been too late. In that case a purchase by an executor through a third person, of property of the testator, was held to be fraudulent and void, though the sale was at public auction, judicially ordered, and the result of the evidence was that a fair price was paid. Said Mr. Justice Wayne, in delivering the opinion of the court, (page 560): "In a case of actual fraud, courts of equity give relief after a long lapse of time, much longer than has passed since the executors, in this instance, purchased their testator's estate. In general, length of time is no bar to a trust clearly established to have once existed; and where fraud is imputed and proved, length of time ought not to

exclude relief. . . . There is no rule in equity which excludes the consideration of circumstances, and, in a case of actual fraud, we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it."

So, in *Prevost* v. *Gratz*, 6 Wheat. 481, 497, it was said by Mr. Justice Story: "It is certainly true that length of time is no bar to a trust clearly established; and in a case where fraud is imputed and proved, length of time ought not, upon principles of eternal justice, to be admitted to repel relief. On the contrary, it would seem that the length of time during which the fraud has been successfully concealed and practised, is rather an aggravation of the offence and calls more loudly upon a court of equity to grant ample and decisive relief."

In *Baker* v. *Whiting*, 3 Sumn. 475, one Tidd, being the owner of certain land, employed the defendant Whiting as his agent to care for the same, pay all taxes, etc. Whiting allowed the land to be sold for taxes in 1821 and bought it in himself, keeping the plaintiff uninformed of the facts. The bill was filed in 1837 by the heirs of Tidd, who died shortly after his employment of Whiting. In delivering the opinion, Mr. Justice Story remarked: "Then it is said the plaintiffs are barred from any right in equity by the mere lapse of time. . . . But what is more particularly applicable to the present case, twenty years had not elapsed before the filing of the bill; and I apprehend that, in case of a trust of lands nothing short of the statute period, which would bar a legal estate or a right of entry, would be permitted to operate in equity as a bar of the equitable estate."

In *Allore* v. *Jewell*, 94 U. S. 506, which was a bill to cancel a conveyance of land alleged to have been obtained by the grantor a few weeks before her death, when from her condition she was incapable of understanding the nature or effect of the transaction, it was held that a lapse of six years before bringing suit to cancel the conveyance could not avail the

defendant, where he had possession of the land and a reasonable rent therefor was equal to the value of his improvements, and there had been no loss of evidence preventing a full presentation of the case.

In *Meader* v. *Norton*, 11 Wall. 442, three sisters obtained in 1839, from the governor of California, a tract of land which was approved by the departmental assembly and possession delivered. Some years after, the husband of one of the sisters, named Bolcoff, suppressed or destroyed this grant and fabricated a pretended grant to himself, and also certain other papers intended to prove the genuineness of such fabricated grant. Upon these papers the sons of Bolcoff, he having died, obtained a confirmation of their claim to the land, the land commissioners supposing that the fabricated papers were genuine; and upon such decree a patent issued to the claimants. The fabricated character of these papers being discovered, the grantee of the rights of the three sisters brought a suit in equity to have the defendants holding under the patent declared trustees of the legal title and compel a transfer of that title to him. Held: that the suit, which was begun in 1865, would lie, and that laches could not prevail as a defence where the relief sought was granted on the ground of secret fraud, and it appeared that the suit was commenced a reasonable time after the fraud was discovered.

In *Insurance Co.* v. *Eldredge*, 102 U. S. 545, 548, a deed of trust of lands to secure a promissory note was released without the surrender or payment of the note, and without express authority of the holder. It was held that a subsequent purchaser with notice took the land subject to the equitable rights of such holder. The extent of the delay does not clearly appear in the report, but in the opinion of the court it is said by Mr. Justice Field: "The company, as already stated, must be deemed to have known of the want of power in the trustee to release the property from the Coburn deed, and it does not lie in its mouth to object that the complainant did not sooner seek to set aside the priority of lien thus gained; nor can it aver that his claim to have the instrument cancelled, by which this priority was secured, is a stale one,

when asserted within the period allowed by law, and no rights of third parties as *bona fide* purchasers have intervened to render inequitable the assertion of his original lien."

In *Bowen* v. *Evans*, 2 H. L. 257, a bill filed to set aside a sale of lands made nearly fifty years before under a decree, on the ground of irregularities in the proceedings and fraud in the sale, it was held that, in the absence of proof of fraud on the part of the purchaser, or that the estate was sold under the value by reason of any corrupt bargain, the sale was not impeachable; but in delivering the opinion Lord Chancellor Cottenham observed: "So, when much time has elapsed since the transactions complained of, there having been parties who were competent to have complained, the court will not, upon doubtful or ambiguous evidence, assume a case of fraud, although upon fraud clearly established no lapse of time will protect the parties to it, or those who claim through them, against the jurisdiction of equity depriving them of the fruits of their plunder."

The case of *Hopkins* v. *Hammond*, 143 U. S. 224, a leading case in this court, is not to the contrary. In this case two partners owned real estate in common, some of which was used in the partnership business. One died making the other by his will a trustee for the testator's children, with power of sale of all the real estate, and directing that the business be continued. After carrying on the business for some time the trustee sold the real estate by auction, and bought portions of it in through a third person, and accounted for half of the net proceeds. The transaction was open and known to all the *cestuis que trustent*, and was objected to by none of them. It was held that there was nothing in this to indicate fraud; that the purchase was not absolutely void but voidable, and might be confirmed by the parties interested, either directly or by long acquiescence, or by the absence of an election to avoid the conveyance within a reasonable time after the facts came to their knowledge. There was a delay of nearly twenty years in this case. In delivering the opinion the Chief Justice said: "Each case must necessarily be governed by its own circumstances, since, though the lapse of a few years may be

sufficient to defeat the action in one case, a longer period may be held requisite in another, dependent upon the situation of the parties, the extent of their knowledge or means of information, great changes in values, the want of probable grounds for the imputation of intentional fraud, the destruction of specific testimony, the absence of any reasonable impediment or hindrance to the assertion of the alleged rights, and the like." A bare statement of these facts will show that it has no application to the case now under consideration.

So in *Felix* v. *Patrick*, 145 U. S. 317, where a bill was filed after a lapse of twenty-eight years to impeach a title fraudulently acquired through the location of certain land script, and the land was shown to have increased enormously in value by being taken within the limits of a city, and to have been largely occupied by persons who had bought on the strength of the apparent title, and erected buildings of a permanent character, it was held that the complainant was barred by laches, but in the opinion of the court it is said: "The law pronounces the transaction a fraud upon her, but it lacks the element of wickedness necessary to constitute moral turpitude. If there had been a deliberate attempt on his part by knavish practices to beguile or wheedle her out of these lands, we should have been strongly inclined to afford the plaintiffs' relief at any time during the life of either of the parties; but as the case stands at present justice requires only what the law, in the absence of the statutory limitation, would demand — the repayment of the value of the script with legal interest thereon."

In *Norris* v. *Haggin*, 136 U. S. 386, plaintiff filed his bill in 1884, alleging an actual fraud committed against him by his two attorneys in 1859, twenty-five years previously, and that he had only discovered the fraud a short time before commencing his suit. The case was heard on demurrer to the bill, and the court found that "there are many things about the bill which are peculiar and calculated to throw suspicion on the claims." It also found that the statement that the complainant had only come to a knowledge of the alleged fraud within a short time of the filing of the bill was shown by the

statements in the bill itself to be false, and that he had known of the alleged fraud for over fifteen years, and that a number of other matters alleged in the bill and amended bill were shown by other contradictory statements to be false, and thereby the whole claim was rendered suspicious; that there were ambiguities in the bill, etc. Taking the whole case as stated by the complainant himself, the court thought that the bill had properly been dismissed by the court below. It is evident that the bill was dismissed upon the ground that the fraud was doubtfully or ambiguously alleged, the claim suspicious and that knowledge of the fraud had existed for a long time.

We do not wish to be understood as holding that the plaintiff, even in the case of actual fraud, may wait an indefinite time, or always so long as the statute of limitations would permit him to bring an action at law before asserting his rights; but where the fraud is clearly proven, the court will look with much more indulgence upon any disability under which the plaintiff may labor as excusing his delay. As was said in *Townsend* v. *Vanderwerker*, 160 U. S. 171, 186: "The question of laches does not depend, as does the statute of limitation, upon the fact that a certain definite time has elapsed since the cause of action accrued, but whether, under all the circumstances of the particular case, plaintiff is chargeable with a want of due diligence in failing to institute proceedings before he did."

The circumstances of this case are so peculiar; the fraud so glaring; the original and persistent intention of McIntire through so many years to make himself the owner of the property, so manifest; the utter disregard shown of the rights of the plaintiff, as well as of Jenison, the mortgagee, upon whose ignorance in the one case and whose confidence in the other he imposed so successfully; the false personation of Emma Taylor, and the fact that the decree in favor of the plaintiff can do no possible harm to any innocent person, demand of us an affirmance of the action of the Court of Appeals. Its decree is accordingly

Affirmed.